

Washington, Thursday, January 16, 1964

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# Rules and Regulations

### Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G-DETERMINATION OF PROPORTIONATE SHARES

[Sugar Determination 851.1, Amdt. 5]

PART 851—COMMITMENT OF NA-TIONAL SUGARBEET ACREAGE RE-SERVE, 1962 AND SUBSEQUENT CROPS

FARMS IN CENTRAL NEW YORK STATE

Pursuant to the provisions of section 302 of the Sugar Act of 1948, as amended, § 851.1 (27 F.R. 10745, 12705; 28 F.R. 1369, 2090, 11220) is further amended by adding the following paragraph (h):

§ 851.1 Commitments of sugarbeet acreage from the national reserve.

(h) Commitment of acreage to farms that will supply sugarbeets to proposed beet sugar facility in the vicinity of Auburn, New York, and conditions of commitment—(1) Amount of commitment. A commitment of 29,500 acres, which it is estimated will yield 50,000 short tons, raw value, of sugar is made to farms in counties of Central New York State (including at least the counties of Cayuga, Onandaga, Ontario, Oswego, Seneca, Tompkins, Wayne and Yates) for the 1965 crop, for the purpose of growing sugarbeets for delivery to the factory proposed to be built in the vicinity of Auburn, New York, by the Pepsi-Cola Company, the home office of which is located in Wilmington, Delaware.

(2) Conditions of commitment. The commitment of acreage made pursuant to subparagraph (1) of this paragraph shall be subject to the following conditions:

(i) Eligible farms. An acreage commitment may be made to any farm in Central New York State.

(ii) Limits of commitment to individual farm. The maximum commitment to any farm shall be the smaller of 75 acres or the acreage on the farm which is suitable for the production of sugarbeets in consideration of sound rotation and other cultural practices.

(iii) Proportionate share protection to be accorded farms utilizing committed acreage. If proportionate shares are in effect in the two years immediately following the year for which an acreage is committed for a locality under this paragraph (h), the proportionate share for any farm in such locality in each of such two years shall not be less than the acreage committed pursuant to this paragraph (h) to such farm and utilized for the production of sugarbeets for the extraction of sugar.

Statement of bases and considerations—General. The original determi-

nation of Commitment of National Sugarbeet Acreage Reserve and amendments 1 through 3 committed a total of 113.730 acres, estimated to produce 229,700 short tons, raw value of sugar, to five localities for five new beet sugar facilities.

In accordance with the representations made to the Department as a basis for these commitments, one new facility commenced operations in 1963, a second is being constructed with the beginning of operations planned for this fall and a third is under construction and is scheduled to begin operations in the fall of 1965.

Construction of the other two facilities and the contracting for processing of sugarbeets did not proceed in substantial accordance with the representations made as a basis for the Secretary's determination of distribution of the sugarbeet acreage reserve to the localities to be served by the proposed facilities, and such determinations of distribution were revoked effective on October 19, 1963. These revocation actions were reflected in amendment 4 to the original determination and involved a total of 39,000 acres, estimated to yield about 84,000 short tons, raw value, of sugar.

Public Hearing. On October 19, 1963, a notice of hearing was published in the FEDERAL REGISTER (28 F.R. 11237) announcing an informal public hearing to receive requests for sugarbeet reserve acreage for the 1964, 1965 and 1966 crops, including the acreages for the 1964 and 1965 crops that became available as the result of the aforementioned revocations. This hearing was held in the Jefferson Auditorium, U.S. Department of Agriculture, Washington, D.C., beginning on December 10 and continued through December 13, 1963. Requests for commitment of the sugarbeet acreage reserve were presented with respect to three new facilities proposed to commence operations for the 1965 crop and twenty-one new facilities proposed to commence operations for the 1966 crop. Several localities requested consideration for either 1965 or 1966 acreage, whichever was available. Testimony was also presented with respect to requests for acreage from the reserve by 7 beet sugar companies, that had already expanded or would expand their processing facilities, and by several farmer groups expressing interest in additional acreage. Several other localities expressed continuing interest in the acreage reserve or indicated that experimental plantings would be conducted.

Among the presentations made at the hearing was a joint request by the Finger Lakes Sugar Beet Growers Association, Inc., of central New York and the PepsiCola Company for a commitment of reserve acreage for the years of 1965 or 1966. In the presentation relating to this locality, a spokesman for the Pepsi-Cola Company stated that if a commitment of 1965 acreage were made in January of

1964, the company was certain that the proposed facility could be completed in time to process 1965-crop sugarbeets, except for unforeseeable contingencies beyond its control.

An official of the Pepsi-Cola Company stated that the company would finance the entire project.

Determination. This determination provides for the commitment of 29,500 acres, estimated to produce 50,000 short tons, raw value, of sugar, to farms in counties of central New York, including the eight which are specifically named.

As heretofore, limitations are established with respect to the acreage that may be committed to any farm, thus permitting a greater sharing of the available acreage than might occur without such limitation.

Although experimental plantings have been conducted on some farms in this locality for the past two crop years for the purpose of determining the economic feasibility of growing sugarbeets on a commercial basis and may be continued in 1964 to further delineate the most suitable locality for growing the crop, any farm therein is eligible for a commitment of acreage.

Based upon the information available to the Department, the locality to which acreage is committed by this action meets all of the criteria enumerated in the Sugar Act. It is the only locality for which acreage was requested for a new facility proposed to commence operations for the 1965 crop with respect to which a firmness of capital commitment has been shown, subject only to a commitment of reserve acreage. Although some other localities requesting 1965 acreage for new facilities planned to submit proof of capital arrangements, no such evidence has been received by the Department.

In view of the foregoing, it is determined that the Finger Lakes locality of Central New York is the best-qualified with respect to the statutory criteria as a whole and that, on the basis of all relevant information available, the commitment of acreage made under this amendment are deemed fair and reasonable and in accordance with the provisions of the Sugar Act.

The Department is continuing its review and appraisal with respect to further commitment of the 1965 reserve. This commitment of 50,000 short tons, raw value, of sugar, together with the reservation of 100,000 short tons, raw value of sugar (including the 65,000 short tons becoming available for that year) for new facilities and/or expansion for the crop year 1966, leaves about 29,000 short tons available for such further commitment.

As was announced in the Department's press release of December 17, 1963, requests for reserve acreage for new facilities and for expansion of existing facilities for the 1966 crop year will be further

considered after the closing date for filing briefs pertaining thereto.

Accordingly, I hereby find and conclude that the foregoing amendment will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153, secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132)

Effective date: Date of publication.

Signed at Washington, D.C., on January 10, 1964.

CHARLES S. MURPHY, Acting Secretary of Agriculture. [F.R. Doc. 64-410; Filed, Jan. 15, 1964; 8:49 a.m.]

## Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System
SUBCHAPTER A—BOARD OF GOVERNORS OF.
THE FEDERAL RESERVE SYSTEM

[Reg. D]

## PART 204—RESERVES OF MEMBER BANKS

## Savings Accounts by Corporations Operated for Profit Prohibited

§ 204.108 Savings accounts by corporations operated for profit prohibited.

For text of this interpretation, see § 217.135 of this subchapter.

(12 U.S.C. 248(c), 461, 462, 462a-1, 462b, 464, 465)

Dated at Washington, D.C., this 26th day of December 1963.

Board of Governors of the Federal Reserve System, [SEAL] MERRITT SHERMAN, Secretary.

[F.R. Doc. 64-396; Filed, Jan. 15, 1964; 8:46 a.m.]

[Reg. H]

#### PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Capital Notes and Debentures as "Capital", "Capital Stock", or "Surplus"

§ 208.108 Capital notes and debentures as "capital", "capital stock", or "surplus".

(a) The Board of Governors has been presented with the question whether capital notes or debentures issued by banks, that are subordinated to deposit liabilities, may be considered as part of a bank's "capital stock", "capital", or "surplus", for purposes of various provisions of the Federal Reserve Act that impose requirements or limitations upon member banks.

(b) A "note" or "debenture" is an evidence of debt, embodying a promise to pay a certain sum of money on a specified date. Such a debt instrument issued by a commercial bank is quite different from its "stock", which evidences a proprietary or "equity" interest in the assets of the bank. Likewise, the proceeds of a note

or debenture that must be repaid on a specified date cannot reasonably be regarded as "surplus funds" of the issuing corporation.

(c) Federal law (12 U.S.C. 51c) expressly provides that the term "capital", as used in provisions of law relating to the capital of national banks, shall mean "the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired." In addition, when Congress in 1934 deemed it desirable to permit certain notes and debentures-those sold by State banks to the Reconstruction Finance Corporation-to be considered as "capital" "capital stock" for purposes of membership in the Federal Reserve System, Congress felt it necessary to implement that objective by a specific amendment to section 9 of the Federal Reserve Act (12 U.S.C. 321). These plain evidences of Congressional intent compel the conclusion that, for purposes of statutory limitations and requirements, "capital" notes and debentures may not properly be regarded as part of either "capital" or "capital stock".

(d) Accordingly, under the law, capital notes or debentures do not constitute "capital", "capital stock", or "surplus" for the purposes of provisions of the Federal Reserve Act, including, among others, those that limit member banks with respect to loans to affiliates (12 U.S.C. 371c), purchases of investment securities (12 U.S.C. 24, 335), investments in bank premises (12 U.S.C. 371d), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), and bank acceptances (12 U.S.C. 372, 373), as well as provisions that limit the amount of paper of one borrower that may be discounted by a Federal Reserve Bank for any member bank (12 U.S.C. 84, 330, 345).

(12 U.S.C. 24, 84, 248(m), 321, 330, 335, 345, 371c, 371d, 372, 373, 463)

Dated at Washington, D.C., this 9th day of January 1964.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,

/ Secretary. [F.R. Doc. 64-397; Filed, Jan. 15, 1964; . 8:46 a.m.]

[Reg. Q]

## PART 217—PAYMENT OF INTEREST ON DEPOSITS

## Savings Accounts by Corporations Operated for Profit Prohibited

§ 217.135 Savings accounts by corporations operated for profit prohibited.

(a) The Board of Governors has received inquiries regarding an interpretation issued by the Comptroller of the Currency under date of December 19, 1963, to the effect that "a national bank may \* \* \* accept savings accounts without regard to whether the funds deposited are to the credit of one or more individuals or of a corporation, association, or other organization, whether operated for profit or otherwise."

(b) As members of the Federal Reserve System, national banks are subject to the provisions of section 19 of the Federal Reserve Act (12 U.S.C. 371a, 371b) which prohibit member banks from paying interest, directly or indirectly, on any demand deposit and which require the Board of Governors to limit the rate of interest that may be paid by such banks on time and savings deposits. To this end, it is necessary to define the terms "demand deposits" and "savings deposits"; and the law (12 U.S.C. 461) expressly authorizes the Board of Governors to define such terms and to prescribe regulations to effectuate the purposes of the statute and prevent evasions.

(c) This Part 217 defines a "savings deposit" in a manner that permits such deposits to be made only by individuals or by corporations, associations, and other organizations which are not operated for profit but for religious, philanthropic, charitable, educational, fraternal, or similar purposes. This definition has been in effect since 1936.

(d) Accordingly a deposit by a corporation operated for profit may not be classified by any member bank, including a national bank, as a savings deposit. Unless such a deposit comes within the definition of a "time deposit" it would constitute a demand deposit under Part 217 and payment of interest on such deposit by a national bank would violate the prohibition of the law against payment of interest on demand deposits.

(e) Failure of a national bank to comply with provisions of the Federal Reserve Act constitutes grounds for instituting legal proceedings to close the bank. The law also provides that any director of a national bank participating in or assenting to a violation shall be personally liable for any damages that may be sustained by the bank, its shareholders, or any other persons in consequence of the violation.

(f) In addition, Part 204 of this subchapter, relating to reserves required to be maintained by member banks in the Federal Reserve System, contains a definition of savings deposits identical to that of Part 217. No deposit of a business corporation in a member bank may be classified as a savings deposit for reserve purposes and, unless it falls within the definition of a time deposit, a national bank must maintain against such a deposit the reserves applicable to demand deposits (161/2 percent for reserve city banks and 12 percent for other member banks), rather than those applicable to time and savings deposits (4 percent for all member banks). Classification of such a deposit as a savings deposit would violate Part 204 and subject the member bank to a penalty for any resulting reserve deficiency.

(12 U.S.C. 248(i). Interprets or applies 12 U.S.C. 264(c) (7), 371, 371a, 371b, 461)

Dated at Washington, D.C., this 26th day of December 1963.

Board of Governors of the Federal Reserve System, [SEAL] MERRITT SHERMAN, Secretary.

[F.R. Doc. 64-398; Flied, Jan. 15, 1964; 8:47 a.m.]

### Title 16—COMMERCIAL **PRACTICES**

Chapter I—Federal Trade Commission [Docket No. C-626]

#### PART 13-PROHIBITED TRADE **PRACTICES**

#### Reader's Digest Association, Inc.

Subpart-Advertising falsely or misleadingly: § 13.13 Business status, advantages, or connections; § 13.13-25 Concealed subsidiary, fictitious collection agency, etc.; § 13.75 Free goods or services; § 13.155 Prices; § 13.155-40 Exaggerated as regular and customary; § 13.-155-100 Usual as reduced, special, etc. Subpart—Enforcing dealings or payments wrongfully: § 13.1045 Enforcing dealings or payments wrongfully. Subpart—Using misleading name—Goods: § 13.2365 Concealed subsidiary, fictitious collection agency, etc.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Consent order requiring publishers of magazines, books, phonograph records, etc., with main office at Pleasantville, N.Y., to cease representing falsely in advertising that their "best sellers" volume could be obtained "free," "absolutely free," or as a "paid in full gift," etc., when a binding obligation was incurred by persons accepting the book; that their Reader's Digest magazine sold regularly at \$4.00 but that because of their profit sharing policy subscribers were entitled to a greatly reduced price of only \$2.97, and that a subscriber was obligated to continue his subscription and to pay the latter price unless he took affirmative action of cancelling his subscription; and representing falsely on the letter head of "The Mail Order Credit Reporting Association, Inc." that delinquent accounts had been turned over to an independent collection agency with instructions to take all necessary legal steps to collect amounts due, when the purported collection agency was only a mailing address utilized by respondent.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent The Reader's Digest Association, Inc., a corporation, and its officer, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of magazines, books, phonograph records or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "free," "absolutely free," "paid in full gift" or any other word or words of similar import or meaning, to designate or describe articles of merchandise or representing that articles of merchandise are offered at nominal amounts, in advertising or in other offers to the public when all of the conditions. obligations, or other prerequisites to the receipt and retention of the said free or nominally priced articles of merchandise are not clearly and conspicuously explained or set forth at the outset so as to leave no reasonable probability that the terms of the advertisements or offer might be misunderstood.

2. Using the word "regular," or words of similar import, to refer to any amount which is in excess of the price at which such merchandise has been usually and regularly sold by respondent at retail in the recent, regular course of its business: or otherwise misrepresenting the respondent's usual and customary retail selling price of such merchandise.

Representing that any saving is offered in the purchase of merchandise from the respondent unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise was usually and customarily sold by the respondent at retail or at which said merchandise was usually and customarily sold at retail in the trade area involved.

4. Misrepresenting in any manner the savings available to purchasers of respondent's merchandise.

5. Representing, directly or indirectly

a. Subscriptions or orders for the aforesaid products or other contractual relationships between respondent and members of the public have been entered, renewed, established, or otherwise effected for any period of time obligating the payment of any sum of money or the performance of any other act in the absence of the direct and expressed agreement of such members of the buying public.

b. Members of the buying public who have not directly and expressly agreed to become indebted to respondent are obligated or liable to pay any amount for goods or services offered for sale or sold by respondent.

6. Representing, directly or indirectly. that delinquent customers' general or public credit ratings will be adversely affected unless respondent in fact refers the information of such delinquency to a separate, bona fide credit rating agency or bureau or other business enterprises.

7. Representing, directly or indirectly, that delinquent accounts will be turned over to an independent, bona fide collection agency unless respondent in fact turns said accounts over to such agencies.

8. Representing, directly or indirectly. that any organization or trade name owned in whole or in part by respondent or over which respondent exercises operating control is an independent, bona fide collection agency.

9. Representing, directly or indirectly, that letters, notices or other communications which have been prepared or originated by respondent have been prepared or originated by any other person, firm or corporation.

10. Representing, directly or indirectly, that delinquent accounts have been turned over to any person, firm or corporation with instructions to take legal steps to collect the outstanding amount due unless such is the fact.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this

Issued: December 10, 1963.

By the Commission.

[SEAL]

JOSEPH W. SHEA, Secretary.

[F.R. Doc. 64-400; Filed, Jan. 15, 1964; 8:47 a.m.]

[Docket No. C-627]

#### PART 13—PROHIBITED TRADE **PRACTICES**

#### Ruth Segal et al.

Subpart—Furnishing false guaranties: § 13.1053 Furnishing false guaranties; § 13.1053-35 Fur Products Labeling Act. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely; § 13.1108-45 Fur Products Labeling Act. Subpart-Neglecting, unfairly or deceptively to make material disclosure: § 13.1845 Composition; § 13.1845-30 Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements: § 13.1852-35 Fur Products Labeling Act; § 13.1865 Manufacture or preparation: § 13.1865-40 Fur Products Labeling Act: § 13.1900 Source or origin: § 13.1900-40 Fur Products Labeling Act: § 13.1900-40 (b) Place.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Ruth Segal, etc. trading as Cameo Fur Co. et al., New York, N.Y., Docket C-627, Dec. 11, 1963]

In the Matter of Ruth Segal and Moe Segal, Individually and as Copartners Trading as Cameo Fur Co. and Claire of Cameo

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by failing to label as "natural", fur products which were not artifically colored; failing, on invoices, to show the true animal name of furs and the country of origin of imported furs, to disclose when fur was bleached or dyed, etc., and to use the terms "persian lamb", "Dyed Broadtail processed lamb", and "natural" where required; invoicing fur products deceptively as "Broadtail Lamb"; failing in other respects to comply with labeling and invoicing requirements; and furnishing false guarantees that their fur products were not misbranded, falsely invoiced or falsely advertised.

The order to cease and desist, including further order requiring report of compliance therewith is as follows:

It is ordered, That respondents Ruth Segal and Moe Segal individually and as copartners trading as Cameo Fur Co. and Claire of Cameo or under any other trade name, and respondents' representatives, agents and employees, directly through any corporate or other device. in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth the term "Natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to completely set out information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder on one side of the labels affixed to fur products,

- 4. Failing to set forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on labels in the sequence required by Rule 30 of the aforesaid rules and regulations.
- 5. Failing to set forth on labels the item number or mark assigned to a fur product.
- B. Falsely or deceptively invoicing fur products by:
- 1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of section 5(b) (1) of the Fur Products Labeling Act.
- 2. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur product.

3. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the word "Lamb".

4. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dyed Lamb".

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Failing to set forth on invoices the item number or mark assigned to fur products.

It is further ordered, That respondents Ruth Segal and Moe Segal, individually and as copartners trading as Cameo Fur Co. and Claire of Cameo, or under any other trade name, and respondents' representatives, agents and employees, directly or through any corporate or

other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced or falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: December 11, 1963.

By the Commission.

[SEAL] JOSEPH W. SHEA,

Secretary.

[F.R. Doc. 64-390; Filed, Jan. 15, 1964; 8:45 a.m.]

[Docket No. C-628]

## PART 13—PROHIBITED TRADE PRACTICES

Robart's Furriers, Inc., et al.

Subpart-Concealing, obliterating or removing law required and informative marking: § 13:512 Fur products tags or identification. Subpart-Invoicing products falsely: § 13.1108 Invoicing products falsely; § 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or § 13.1185 Composition; mislabeling: § 13.1185-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure; § 13.1845 Composition; § 13.1845-30 Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements; § 13.1852–35 Fur Products Labeling Act; § 13.1865 Manufacture or preparation; § 13.1865-40 Fur Products Labeling Act; § 13.1900 Source or origin; § 13.1900-40 Fur Products Labeling Act; § 13.1900-40(b) Place.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Robart's Furriers, Inc., et al., Hartford, Conn., Docket C-628, Dec. 11, 1963]

In the Matter of Robart's Furriers, Inc., a Corporation and William Weinbaum, Helaine Weinbaum, Goldine Weinbaum and Maurice M. Weinbaum, Individually and as Officers of Said Corporation

Consent order requiring retail furriers in Hartford, Conn., to cease violating the Fur Products Labeling Act by failing to disclose on labels and invoices the true animal name of furs and when fur was artificially colored; labeling fur products with the name of another animal than that producing the fur; failing to show the country of origin of imported furs on invoices; failing in other respects to comply with labeling and invoicing requirements; making pricing claims in newspaper advertising without keeping the required records; removing the original labels prior to ultimate sale of fur products; and substituting non-conforming labels for those originally affixed to fur products while failing to keep the records required.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Robart's Furriers, Inc., a corporation and its officers, and William Weinbaum, Helaine Weinbaum, Goldine Weinbaum, and Maurice M. Weinbaum, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms, "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products\_showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form on labels affixed to fur products.

3. Setting forth on labels attached to fur products the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the rules and regulations.

4. Failing to set forth the term "natural" as part of the information required to be disclosed on labels under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

5. Setting forth trade names, coined names, or other names or words descriptive of a fur as being fur of an animal which is in fact fictitious or non-existent.

- 6. Failing to completely set out information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder on one side of the labels affixed to the fur products.
- 7. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting on labels affixed to fur products.
- 8. Failing to set forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in the sequence required by Rule 30 of the aforesaid rules and regulations.
- 9. Failing to set forth separately on labels attached to fur products composed of two or more sections containing different animal fur the information required under section 4(2) of the Fur Products Labeling Act and the rules and

regulations promulgated thereunder with respect to the fur comprising each section.

 Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely and deceptively invoicing

fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of section 5(b) (1) of the Fur Products Labeling Act.

2. Failing to set forth on invoices the item number or mark assigned to fur

products.

C. Making claims and representations of the types covered by subsections (a), (b), (c), and (d) of Rule 44 of the rules and regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That respondents Robart's Furriers, Inc., a corporation and its officers, and William Weinbaum, Helaine Weinbaum, Goldine Weinbaum and Maurice M. Weinbaum, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device do forthwith cease and desist except as provided in section 3(e) of the Fur Products Labeling Act. from removing, or causing or participating in the removal of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

It is further ordered, That respondents Robart's Furriers, Inc., a corporation and its officers, and William Weinbaum, Helaine Weinbaum, Goldine Weinbaum, and Maurice Weinbaum, individually and as officers of said corporation and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, sale, advertising, or offering for sale, in commerce, or the processing for commerce, of fur products; or in connection with the selling, advertising, offering for sale, or processing of fur products which have been shipped and received in commerce, do forthwith cease and desist from:

A. Misbranding fur products by sub stituting for the labels affixed to such fur products pursuant to section 4 of the Fur Products Labeling Act labels which do not conform to the requirements of the aforesaid Act and the rules and regulations promulgated thereunder.

B. Failing to keep and preserve the records required by the Fur Products Labeling Act and the rules and regulations promulgated thereunder in substituting labels as permitted by section 3(e) of the said Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the

manner and form in which they have complied with this order.

Issued: December 11, 1963.

By the Commission.

[SEAL]

Joseph W. Shea, Secretary.

[F.R. Doc. 64-389; Filed, Jan. 15, 1964; 8:45 a.m.]

[Docket No. C-629]

## PART 13—PROHIBITED TRADE PRACTICES

#### Greans, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.155 Prices; § 13.155-40 Exaggerated as regular and customary; § 13.235 Source or origin; § 13.235-25 Fashion designers. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805 Exaggerated as regular and customary. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition; § 13.1845-30 Fur Products Labeling Act; § 13.1852 Formal regulatory and statutory requirements; § 13.1852-35 Fur Products Labeling Act; § 13.1865 Manufacture or preparation; § 13.1865-40 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Greans, Inc., et al., Norfolk, Va., Docket C-629, Dec. 11, 1963]

In the Matter of Greans, Inc., a Corporation, and Barney B. Brittman, Fanny B. Cohen, Jack Cohen and Blanche C. Brittman, Individually and as Officers of Said Corporation

Consent order requiring retail furriers in Norfolk, Va., to cease violating the Fur Products Labeling Act by representing, in labeling and advertising, prices of fur products as reduced from higher prices which were, in fact, fictitious; failing, in newspaper advertising, to show the true animal name of fur used in fur products; representing falsely, in such advertising, that fur products on sale were "from our exclusive fur collection by Oleg Cassini". failing to use the term "natural" for fur products which were not artificially colored, failing to comply with other advertising requirements; and failing to keep adequate records as a basis for pricing claims.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Greans, Inc., a corporation, and its officers and Barney B. Brittman, Fanny B. Cohen, Jack Cohen, and Blanche C. Brittman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution or distribution or distribution or distribution or distribution or distribution or distribution.

tion, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying such products by any representation that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise so represented was usually and customarily sold at retail by the respondents unless such merchandise was in fact usually and customarily sold at retail by respondents at such price in the recent past.

2. Misrepresenting in any manner on labels or other means of identification the savings available to purchasers of

respondent's products.

3. Falsely or deceptively representing in any manner, directly or by implication, on labels or other means of identification that prices of respondents' fur products are reduced.

B. Falsely or deceptively advertising fur products through the use of any advertisements, representation, public announcement or notice which is intended, to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of any fur products, and which:

1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(a) of the

Fur Products Labeling Act.

2. Represents, directly or by implication that any of their fur products were manufactured, created, designed or styled by Oleg Cassini or any other person unless such fur products were manufactured, created, designed or styled by Oleg Cassini or such other person.

3. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

4. Fails to set forth all parts of the information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each

other.

5. Represents, directly or by implication, that any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold at retail by the respondents unless such advertised merchandise was in fact usually and customarily sold at retail at such price by respondents in the recent past.

6. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

7. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

D. Making claims and representations of the types covered by subsections (a). (b), (c) and (d) of Rule 44 of the rules and regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: December 11, 1963. By the Commission.

[SEAL]

JOSEPH W. SHEA. Secretary.

[F.R. Doc. 64-388; Filed, Jan. 15, 1964; 8:45 a.m.]

[Docket No. C-630]

#### PART 13—PROHIBITED TRADE **PRACTICES**

#### Rodder's Mademoiselle et al.

Subpart—Advertising falsely or mis-leadingly: § 13.155 Prices; § 13.155-70 Percentage savings. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely; § 13.1108-45 Fur Products Labeling Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.-1590 Composition; § 13.1590-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition; § 13.-1845-30 Fur Products Labeling Act: § 13.1852 Formal regulatory and statutory requirements; § 13.1852-35 Fur Products Labeling Act; § 13.1865 Manu-facture or preparation; § 13.1865-40 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Rodder's Mademoiselle, et al., Fresno, Calif., Docket C-630, Dec. 11, 1963]

In the Matter of Rodder's Mademoiselle. a Corporation, and Abraham L. Rodder and Samuel E. Rodder, Individually and as Officers of Said Corporation

Consent order requiring retail furriers. in Fresno, Calif., to cease violating the Fur Products Labeling Act by failing in invoicing and newspaper advertising, to show the true animal name of fur used in fur products and the country of origin of imported furs; failing, in invoicing, to disclose when fur was artificially colored, using the term "Mink" for Japanese Mink, using "Broadtail" deceptively, and failing to use the terms "Dyed Broadtail-processed Lamb" and "natural" as required on invoices; setting forth the name of an animal other than that producing certain furs, failing to use the term "natural" where required. and representing prices falsely as reduced by making such statements as "Save at least 25%", in advertising; failing to comply with other invoicing and advertising requirements; and failing to main-

tain adequate records as a basis for pricing claims.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Rodder's Mademoiselle, a corporation, and its officers and Abraham L. Rodder and Samuel E. Rodder, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product: or in connection with the sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce". "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the infor-mation required to be disclosed in each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on invoices pertaining to fur products any false or deceptive information with respect to the name or designation of the animal or animals that produced the fur contained in such fur

3. Setting forth information required under section 5(b) (1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

4. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the words "Dved Lamb".

5. Failing to set forth the term "Natural" as part of the information required to be disclosed on invoices under the Fur Products Labeling Act and rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tip-dyed or otherwise artificially colored.

6. Failing to set forth separately information required under section 5(b) (1) of the Fur Products Labeling Act and rules and regulations promulgated there-under with respect to each section of fur products composed of two or more sections containing different animal furs.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of any fur product and which:

. 1. Fails to set forth in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(a) of the Fur Products Labeling Act.

2. Sets forth the name or names of any animal or animals other than the name of the animal producing the furs contained in the fur product as specified in the Fur Products Name Guide and as prescribed by the rules and regulations.

3. Represents directly or by implication through percentage savings claims that prices of fur products are reduced to afford purchasers of respondents' fur products the percentage of savings stated when the prices of such fur products are not reduced to afford to purchasers the percentage of savings stated.

4. Misrepresents in any manner the savings available to purchasers of re-

spondents' fur products.

5. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

6. Sets forth information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

7. Fails to set forth the term "Natural" as part of the information required to be disclosed in advertisements under the Fur Products Labeling Act and the rules and regulations promulgated thereunder to describe fur products which are not pointed, bleached, dyed, tipdyed, or otherwise artificially colored.

C. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the rules and regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: December 11, 1963.

By the Commission.

[SEAL] JOSEPH W. SHEA, Secretary.

[F.R. Doc. 64-401; Filed, Jan. 15, 1964; 8:48 a.m.1

[Docket No. C-631]

#### PART 13-PROHIBITED TRADE **PRACTICES**

#### General Recreation Industries, Inc., et al.

Subpart-Advertising falsely or misleadingly: § 13.155 Prices: § 13.155-40 Exaggerated as regular and customary; § 13.230 Size or weight. Subpart-Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 Furnishing means and instrumentalities of misrepresentation or deception: § 13.-1055-50 Preticketing merchandise mis-leadingly. Subpart—Misbranding or mislabeling: § 13.1280 Price; § 13.1323 Size or weight.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, General Recreation Industries, Inc., et al., Minne-apolis, Minn., Docket C-631, Dec. 11, 1963] In the Matter of General Recreation Industries, Inc., a Corporation, and Morton G. Brown, Emanuel M. Green, Myron B. Green, Sol Kronick and Herschal Wolpert, Individually and as Officers of Said Corporation

Consent order requiring Minneapolis, Minn., manufacturers of sleeping bags to cease attaching fictitious price labels to their sleeping bags, and distributing to retailers and others catalogs con-taining excessive "list" prices, represented thereby as usual retail selling prices; and misrepresenting the size of the bags by giving, on attached labels and in catalogs, the "cut size", which was larger than the actual size.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents General Recreation Industries, Inc., a corporation, and its officers, Morton G. Brown, Emanuel M. Green, Myron B. Green, Sol Kronick, and Herschal Wolpert, individually and as officers of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacture, offering for sale, sale or distribution of sleeping bags or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- 1. Advertising, labeling, representing in a catalog or otherwise representing the "cut", "cut size" or dimensions of material used in their construction, unless such representation is accompanied by a description of the finished or actual size, in immediate conjunction therewith with the latter description being given at least equal prominance;
- 2. Misrepresenting the size of such products on labels or in any other manner:
- 3. The act or practice of preticketing merchandise at an indicated retail price, when the indicated retail price is in excess of the generally prevailing retail price for such merchandise in the trade area, or when there is no generally prevailing retail price for such merchandise in the trade area;
- 4. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and regular retail price of, or the size of respondents' merchandise;

5. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price of, or the size of re-

spondents' merchandise;

- 6. Using the term "list price" or any other words or terms of similar import. to refer to price of merchandise unless such amounts are the prices at which the merchandise is usually and customarily sold in the trade area in which such representations are made, or otherwise misrepresenting the usual and customary retail price or prices of respondents' merchandise in any trade area.
- It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report

in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: December 11, 1963.

By the Commission.

[SEAL]

JOSEPH W. SHEA, Secretary.

[F.R. Doc. 64-399; Filed, Jan. 15, 1964; 8:47 a.m.l

### Title 32—NATIONAL DEFENSE

Chapter VI-Department of the Navy SUBCHAPTER E-CLAIMS

#### PART 750-NAVY GENERAL CLAIMS PART 753—NAVY FOREIGN CLAIMS

#### Miscellaneous Amendments

Scope and purpose. The amendments deal with the processing of certain types of claims in favor of or against the United States and are intended to update §§ 750.48 and 753.29(b) in accordance with a recent Department of Defense notice (28 F.R. 14245). Corresponding changes to the Manual of the Judge Advocate General will be distributed to Navy and Marine Corps commands in due course.

- 1. Section 750.48 is revised to read as follows:
- § 750.48 Single service assignment of responsibility for processing of claims.
- (a) Applicable law. A Department of Defense notice (28 F.R. 14245) has assigned single service responsibility for the processing of claims under the following law:
- (1) Foreign Claims Act (10 U.S.C. 2734).
- (2) Military Claims Act (10 U.S.C. 2733).
- (3) 10 U.S.C. 2734a and 2734b, Prorata cost-sharing of claims pursuant to international agreement.
- (4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements.
- (5) Act of September 25, 1962 (76 Stat. 593-594, 42 U.S.C. 2651-2653), Claims for reimbursement for medical care furnished by the United States.

(6) Act of October 9, 1962 (76 Stat.767, 10 U.S.C. 2736), Claims not cognizable under any other provisions of law.

(7) Act of June 10, 1921 (42 Stat. 24, 31 U.S.C. 71), Claims and demands by the Government of the United States.

- (b) List of countries. Responsibility for the processing of all claims in favor of the United States cognizable under paragraph (a) (4), (5), or (7) of this section, or against the United States cognizable under paragraph (a) (1), (2), (3), (4), or (6) of this section, which arise in the following countries is assigned to the military departments designated below:
- (1) Department of the Army: Belgium, Ethiopia, France, The Federal Republic of Germany, Iran, Korea, Republic of Vietnam, and as the Receiving State Office in the United States under paragraph (a) (3) and (4) of this section.

(2) Department of the Navy: Australia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Canada, Denmark, Greece, Japan, Libya, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

- (c) U.S. forces aftoat cases under \$200. Notwithstanding the provisions of paragraph (b) of this section, the Department of the Navy is authorized to settle nonscope of duty claims under \$200 arising in foreign ports visited by U.S. forces afloat, and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in paragraph (a) (4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.
- (d) Assignment of responsibility by a Unified Commander. On an interim basis prior to receiving confirmation and approval from the appropriate office in the Office of the Secretary of Defense, the Unified Commander may, when necessary to implement contingency plans, assign single service responsibility for processing of claims in countries where such assignment has not already been made under the notice referred to in paragraph (a) of this section.
- 2. Section 753.29(b) is revised to read as follows:
- § 753.29 Claims arising in specified foreign countries.
- (b) Single service assignment of responsibility for processing of claims—(1) Applicable law. A Department of Defense notice (28 F.R. 14245) has assigned single service responsibility for the processing of claims under the following law:
- (i) Foreign Claims Act (10 U.S.C. 2734).
- (ii) Military Claims Act (10 U.S.C. -2733).
- (iii) 10 U.S.C. 2734a and 2734b, Prorata cost-sharing of claims pursuant to international agreement.
- (iv) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements.
- (v) Act of September 25, 1962 (76 Stat. 593–594, 42 U.S.C. 2651–2653), Claims for reimbursement for medical care furnished by the United States.
- (vi) Act of October 9, 1962 (76 Stat. 767, 10 U.S.C. 2736), Claims not cognizable under any other provision of law.

(vii) Act of June 10, 1921 (42 Stat. 24, 31 U.S.C. 71), Claims and demands by the Government of the United States.

- (2) List of countries. Responsibility for the processing of all claims in favor of the United States cognizable under subparagraph (1) (iv), (v) or (vii) of this paragraph, or against the United States cognizable under subparagraph (1) (i), (ii), (iii), (iv), or (vi) of this paragraph, which arise in the following countries is assigned to the military departments designated below:
- (i) Department of the Army: Belgium, Ethiopia, France, The Federal Republic of Germany, Iran, Korea, Republic of Vietnam, and as the Receiving State Office in the United States under sub-

paragraph (1) (iii) and (iv) of this paragraph.

(ii) Department of the Navy: Australia, Iceland, Italy, and Portugal.(iii) Department of the Air Force:

(iii) Department of the Air Force: Canada, Denmark, Greece, Japan, Libya, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(3) U.S. forces afteat cases under \$200. Notwithstanding the provisions of subparagraph (2) of this paragraph, the Department of the Navy is authorized to settle nonscope of duty claims under \$200 arising in foreign ports visited by U.S. forces afteat, and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in subparagraph (1) (iv) of this paragraph concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(4) Assignment of responsibility by a Unified Commander. On an interim basis prior to receiving confirmation and approval from the appropriate office in the Office of the Secretary of Defense, the Unified Commander may, when necessary to implement contingency plans, assign single service responsibility for processing of claims in countries where such assignment has not already been made under the notice referred to in subparagraph (1) of this paragraph.

(R.S. 161, 42 Stat. 24, secs. 2733, 2734, 5031, 70A Stat. 153, 154, 278, as amended, 76 Stat. 512, 593-594, 767; 5 U.S.C. 22, 10 U.S.C. 2733, 2734a, 2734a, 2734b, 2736, 31 U.S.C. 71, 42 U.S.C. 2651-2653)

Dated: January 10, 1964.

By direction of the Secretary of the Navy.

[SEAL] ROBERT D. POWERS, Jr., Rear Admiral, U.S. Navy, Acting Judge Advocate General of the Navy.

[F.R. Doc. 64-386; Filed, Jan. 15, 1964; 8:45 a.m.]

# Proposed Rule Making

### DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[7 CFR Part 362]

#### INSECTICIDES, FUNGICIDES, AND **RODENTICIDES**

#### Notice of Proposed Rule Making

On September 6, 1963, there was published in the Federal Register (F.R. Doc. 63-9541) a notice of proposed rule making concerning the revision of the regulations for the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (7 CFR 362). Interested persons were given until November 30, 1963, to submit written data, views, or arguments. Many comments were received from the general public and the trade. In view of these comments, certain changes have been made in the proposed revision for further consideration.

In § 362.2, Terms Defined, additions have been made for clarity. Other principal changes occur in § 362.8 Economic poisons highly toxic to man, § 362.9 Warning or caution statement, § 362.13 Adulteration, § 362.14 Misbranding, and § 362.17 Permits. Other changes have been made in §§ 362.6 (a), (b) and (f), 362.7(b), 362.10(j), 362.11(d), and 362.12 (a).

As amended, the proposed revision of the regulations will read as follows:

#### § 362.1 Words in singular form.

Words used in the singular form in this subpart shall include the plural, and vice versa, as the case may require.

#### § 362.2 Terms defined.

Terms used in this subpart shall have the meanings set forth for such terms in the Act. In addition, as used in this subpart, the following terms shall have the meanings stated below:

(a) Act. "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

(b) Director. "Director" means the Director of the Pesticides Regulation Division, Agricultural Research Service, United States Department of Agriculture, or any officer or employee to whom he has heretofore lawfully delegated or to whom he may hereafter lawfully delegate the authority to act in his stead.

(c) Economic poison. "Economic poison" includes all preparations intended for use as insecticides, rodenticides, nematocides, fungicides, herbicides, amphibian and reptile poisons or repellents, bird poisons or repellents, fish poisons or repellents, mammal poisons or repellents, invertebrate animal poisons or repellents, plant regulators, plant defoliants, and plant desiccants. A product shall be deemed to be an economic poison regardless of whether intended for use as packaged or after dilution or mixture with other substances, such as carriers or baits. Products intended only for use after further processing or manufacturing, such as grinding to dust or more extensive operations, shall not be deemed to be economic poisons. Substances which have recognized commercial uses other than uses as economic poisons shall not be deemed to be economic poisons unless such substances are:

(1) Specially prepared for use as eco-

nomic poisons, or
(2) Labeled, represented, or intended for use as economic poisons, or

(3) Marketed in channels of trade where they will presumably be purchased as economic poisons.

(d) Fungicide. "Fungicide" includes all preparations intended for preventing. destroying, repelling, or mitigating any fungi or any viruses (other than those on or in living man or other animals). Examples of fungicides include but are not limited to: (1) Plant fungicides, seed fungicides, fungicidal wood preservatives, and mildew and mold preventatives, and

(2) Disinfectants, sanitizers, and sterilizers, except those for use only on or in living man or other animals.

(e) Herbicide. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed, including any algae or other aquatic weed, or any plant parts growing where not wanted.

(f) Nematocide. "Nematocide" cludes only those products intended for preventing, destroying, repelling, or mitigating nematodes inhabiting soil, water, plants, or plant parts. The term does not include products intended for use against nematodes in or on living man or other animals.

(g) Plant regulator. "Plant regulator" includes those substances intended to alter the behavior of ornamental or crop plants or the produce thereof through physiological rather than physical action. The term includes, but is not limited to, substances intended to accelerate or retard the rate of growth or maturation of ornamental or crop plants. enhance fruit set, prevent fruit drop, accelerate root formation and elongation, prolong or break domancy of ornamental or crop plants or the produce thereof, but shall not include substances intended solely for use as plant nutrients or fertilizers.

(h) Active ingredient. An "active ingredient" is an ingredient which: (1) Is capable in itself, and when used in the same manner and for the same purposes as directed for use of the product, of preventing, destroying, repelling, or mitigating insects, fungi, rodents, weeds, nematodes, or other pests, or altering through physiological action the be-havior of ornamental or crop plants or the produce thereof, or causing leaves or foilage to drop from a plant, or artificially accelerating the drying of plant

(2) Is present in the product in an amount sufficient to add materially to its effectiveness; and

(3) Is not antagonistic to the activity of the principal active ingredient: Provided, however, That the Director may require an ingredient to be designated as an active ingredient if, in his opinion, it sufficiently increases the effectiveness of the economic poison to warrant such action.

(i) Official inspector, "Official inspector" means any employee or agent of the Department of Agriculture or the Treasury Department authorized by the Director or by the Secretary of the Treasury to make investigations in connection with enforcement of the Act.

(j) Vertebrate animals. "Vertebrate animals" means all species of the subphylum vertebrata including domestic vertebrates and vertebrate species of fish

and wildlife.

(k) Invertebrate animals. "Invertebrate animals" means all forms of animal life other than vertebrate animals, including both domestic and wild species.

#### § 362.3 Administration.

The Director is authorized to take such action as, in his discretion, may be necessary in the administration and enforcement of the Act and the regulations in this part.

#### LABELING

#### § 362.4 Labeling required.

Every economic poison shall bear a label containing the information specified in the Act and the regulations in this

#### § 362.5 Language to be used.

All statements, words, and other information required by the Act or the regulations in this part to appear on the label or labeling of any economic poison shall be in the English language: Provided, That shipments of articles intended solely for sale in foreign countries may bear labels or labeling in the appropriate foreign language. The Director may permit the use of an appropriate foreign language version of the label or labeling in addition to the English version on products intended for distribution in areas of the United States where a large percentage of the population does not speak English.

#### § 362.6 Labeling.

(a) Contents of label and labeling. The label of every economic poison must show, clearly and prominently, the name, brand or trademark under which the product is sold; the name and address of the manufacturer, registrant, or person for whom manufactured; the net contents as prescribed in paragraph (e) of this section; an ingredient statement as prescribed in § 362.7, and an appropriate warning or caution statement as prescribed in § 362.9. The label or labeling of every economic poison must bear directions for use which are necessary and if complied with, adequate for

the protection of the public.

(b) Placement of label. The label shall appear on the economic poison or the immediate container thereof. If the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read by a person with normal vision, the label must also appear on such outside wrapper or container if it is a part of the retail package.

(c) Name and address of manufacturer, distributor, packer, formulator, or registrant. An unqualified name and address given on the label shall be considered as the name and address of the manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, or if the name of the person for whom the economic poison was manufactured appears on the label, it must be qualified by appropriate wording such as "Packed for \* \* \*." "Distributed by \* \* \*," or "Sold by \* \* \*" to show that the name is not that of the manufacturer. If a person has two or more locations at which an economic poison is manufactured or packaged, or from which it is distributed, the name and address of the person's principal office will be accepted except in cases where the Director determines that the address of the exact location is necessary for the protection of the public. The address of the manufacturer, registrant, or person for whom manufactured shall include the street address, if any, unless the street address is shown in a current city directory or telephone directory.

(d) Name, brand, or trade-mark of economic poison. The name, brand, or trade-mark of the economic poison, appearing on the label shall be that under which the economic poison is registered.

(e) Net content. (1) The net content shall be exclusive of wrappers or other material, and shall be deemed to be average content unless stated as a minimum quantity.

- (2) Net content shall be stated in the terms of weight or measure in general use by consumers and users of the type of economic poison to give accurate information as to the quantity of the economic poison. If there is no general use, the net content statement shall be in terms of liquid measure if the product is a liquid, and in terms of weight if it is solid, semi-solid, viscous, or a mixture of liquid and solid. Statements of liquid measure shall be in terms of the United States gallon, quart, pint, and fluid ounce at 68° F. The statements of weight shall be in terms of avoirdupois pound and ounce. All statements of net content shall be in terms of the largest unit present.
- (3) If the contents are stated as a minimum quantity, variation below the stated quantity is not permissible and variation above shall not be unreasonably large.
- (4) If the contents are not stated as a minimum quantity, variation shall be permitted only to the extent that it represents deviations unavoidable in good packing practice. The average quantity in the packages in a shipment shall not fall below the average quantity stated,

nor shall there be any unreasonable variation from the average in the contents of any package.

(f) Legibility of label and labeling. All words, statements, graphic representations, or designs required by the regulations in this part to appear on the label or labeling must be clearly legible and easy to read by a person with normal vision. The signal word, when required, and the statement "Keep out of reach of children" prescribed in § 362.9(a) shall be of a size bearing a reasonable relationship to the other type on the front part of the label and to the size of the container. The signal word, when required, shall not be less than 18 point type and the said warning statement shall not be less than 12 point type, unless the label space on the container is too small to accommodate such type sizes in which case the Director shall prescribe the type When the size of the label space requires a reduction in type size, the reduction shall be made to a size no smaller than is necessary and in no event to a size smaller than 6 point type.

#### § 362.7 Ingredient statement.

(a) Location of ingredient statement. The ingredient statement must appear on the front panel or that part of the label displayed under customary conditions of purchase, except in cases where the Director determines that, due to the size or form of the container, a statement on that portion of the label is impracticable, and permits such statement to appear on another side or panel of the label. Regardless of the placement of the ingredient statement on the label. it shall be sufficiently prominent and in type size which can be easily read by a person with normal vision. The ingredient statement must run parallel with other printed matter on the panel of the label on which it appears and must be on a clear contrasting background not obscured or crowded.

(b) Names of ingredients. The wellknown common name of each of the listed ingredients must be given or, if an ingredient has no common name, the correct chemical name which conforms most closely with generally accepted rules of chemical nomenclature. If there is no common name and the chemical composition is complex, the Director may permit the use of a new or coined name which he finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the Director may prescribe the terms under which it may be used. A trade-mark or trade name shall not be used as the name of an ingredient except when it has become a common name.

(c) Percentages of ingredients. Percentages of ingredients shall be determined by weight and the sum of the percentages of the ingredients shall be 100. Sliding scale forms of ingredient statements shall not be used.

(d) Designation of ingredients. (1) Active ingredients and inert ingredients shall be so designated, and the term "inert ingredients" shall appear in the same size type and be equally as prominent as the term "active ingredients."

(2) If the name but not the percentage of each active ingredient is given, the

names of the active and inert ingredients shall, respectively, be shown in the descending order of the percentage of each present in each classification and the name of each ingredient shall be given equal prominence.

(e) Active ingredient content. As long as an economic poison is subject to the Act the percentages of active ingredients in the economic poison shall be those declared in the ingredient statement.

## § 362.8 Economic poisons highly toxic to man.

- (a) Economic poisons which fall within any of the following categories when tested on laboratory animals as specified in subparagraphs (1), (2), or (3) of this paragraph are highly toxic to man or contain substances or quantities of substances highly toxic to man within the meaning of the Act (such economic poisons being hereinafter in this part referred to as economic poisons highly toxic to man): Provided, however, That the Director may, upon application and after opportunity for hearing, exempt any economic poison which is in any of these categories, but which is not in fact highly toxic to man, from the requirements of the Act and the regulations in this part with respect to economic poisons highly toxic to man:
- (1) Oral toxicity. An economic poison which has a single dose  $LD_{\infty}$  of 50 milligrams or less per kilogram of body weight when administered orally to both male and female rats (or to other rodent or nonrodent species specified by the Director); or
- (2) Toxicity on inhalation. An economic poison which has an LC₂ of 2,000 micrograms or less of dust or mist per liter of air or 200 parts per million or less by volume of a gas or vapor, when administered by continuous inhalation for one hour to both male and female rats (or to other rodent or nonrodent species specified by the Director), if the Director finds that it is reasonably foreseeable that such concentration will be encountered by man; or
- (3) Toxicity by skin absorption. An economic poison which has an LD<sub>∞</sub> of 200 milligrams or less per kilogram of body weight when administered by continuous contact for twenty-four hours with the bare skin of rabbits (or other rodent or nonrodent species specified by the Director).
- (b) Tests on other species. Tests on other specified rodent or nonrodent species may be required by the Director with respect to individual economic poisons or to classes of economic poisons whenever he finds that tests on other species are necessary to determine whether an economic poison is highly toxic to man.
- (c) Terms  $LD_{\omega}$  and  $LC_{\omega}$ . An  $LD_{\omega}$  as used in connection with oral toxicity and skin 'absorption toxicity tests specified in paragraph (a) (1) and (3) of this section is the dose and  $LC_{\omega}$  as used in connection with inhalation tests specified in paragraph (a) (2) of this section is the concentration which is expected to cause death within 14 days in 50 percent of the test animals so treated.

(d) Toxicity based on human experience. If the Director finds, after opportunity for hearing, that available data on human experience with any economic poison indicate a toxicity greater than that determined from the above described tests on animals, the human data shall take precedence and, if he finds that the protection of the public so requires the Director shall declare such an economic poison to be highly toxic to man for the purposes of this Act and the regulations thereunder.

#### § 362.9 Warning or caution statement.

Warning or caution statements, which are necessary and, if complied with, adequate to prevent injury to living man and useful vertebrate animals, useful vegetation, and useful invertebrate animals, must appear on the label in a place sufficiently prominent to warn the user, and must state clearly and in nontechnical language the particular hazard involved in the use of the economic poison, e.g., ingestion, skin absorption, inhalation, flammability or explosion, and the precautions to be taken to avoid accident,

injury, or damage.

(a) The label of every economic poison shall bear warnings or cautions which are necessary for the protection of the public, including the statement, "Keep out of reach of children," and a signal word such as "Danger," "Warning," or "Caution" as the Director may prescribe, on the front panel or that part of the label displayed under customary conditions of purchase: Provided, however, The Director may permit reasonable variations in the placement of that part of the required warnings and cautions other than the statement "Keep out of reach of children" and the required signal word, if in his opinion such variations would not be injurious to the public. If an economic poison is marketed in channels of trade where the likelihood of contact with children is extremely remote, the Director may waive the requirement of the statement "Keep out of reach of children" if in his opinion such a statement is not necessary to prevent injury to the public. The Director may permit a statement such as "Keep away from infants and small children' in lieu of the statement "Keep out of reach of children" if he determines that such a variation would not be injurious to the public.

(b) The label of every economic poison which is highly toxic to man as described in § 362.8 shall bear the word "Danger" along with the word "Poison" in red on a contrasting background in immediate proximity to the skull and crossbones and an antidote statement including directions to call a physician immediately, on the front panel or that part of the label displayed under customary conditions of purchase: Provided, however, The Director may permit reasonable variations in the placement of the antidote statement if some reference such as "See antidote statement on back panel" appears on the front panel near the word "Poison" and the skull

and crossbones.

REGISTRATION

#### § 362.10 Registration.

(a) Eligibility. Any manufacturer, packer, seller, distributor, or shipper of an economic poison is eligible to apply for registration of such economic poison.

(b) Effect of registration. If an economic poison is registered under the Act no further registration under the Act by other persons is required: Provided, That

(1) The product is in the manufacturer's or registrant's original unbroken immediate container: and

(2) The claims made for it and the directions for its use do not differ from the representations made in connection with registration; and

(3) The product contains the labeling accepted in connection with registration and otherwise complies with the Act.

(c) Procedure for registration. Applications for registration should be addressed to Pesticides Regulation Division, Agricultural Research Service, United States Department of Agriculture, Washington, D.C., 20250. Application forms will be furnished upon request. All applications for registration shall be ac-companied by duplicate copies of the proposed labeling, including all printed or graphic matter which is to accompany the economic poison at any time and, if requested by the Director, a full descripton of the tests made and the results thereof upon which the claims for the economic poison are based, together with such other information as may be necessary to assure compliance with the Act and the regulations in this part. If any part of the proposed labeling submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. Applications should be submitted as far in advance as possible, and at least 30 days, before it is desired that registration take effect. However, the period of time required to process applications to determine the adequacy of the proposed labeling may exceed 30 days in some cases. Applications which require consultation with other governmental agencies will take a longer period of processing. No fees are charged for registration.

(d) Effective date of registration. Registration of an economic poison shall become effective on the date the notice

of registration is issued.

(e) Responsibility of a registrant. The registrant is responsible for the accuracy and completeness of all information submitted in connection with his application for registration of an economic poison.

(f) Changes in labeling or formulas. (1) Changes in the labeling or changes in the formula of a registered economic poison must be submitted in advance to the Pesticides Regulation Division, Agricultural Research Service, United States Department of Agriculture, Washington, D.C., 20250. The registrant must describe the exact changes desired and the proposed effective date and, upon request, shall submit a description of tests which justify such changes.

(2) After the effective date of a change in labeling or formula, the product shall be marketed only under the new claims or formula: Provided, however, The Director may permit a reasonable time for the disposition of stocks of the discontinued product, if in his opinion such an extension would not endanger the public.

(g) Claims must conform to registra-Claims made for an economic poison must not differ from representations made in connection with registration, including representations with respect to effectiveness, ingredients, directions for use, or pests against which

the product is recommended.

(h) Duration of registration. If at any time it does not appear to the Director that the economic poison is such as to warrant the proposed claims for it or if the economic poison and its labeling and other material required to be submitted do not comply with the provisions of the Act, the Director shall notify the registrant of the facts involved and afford him an opportunity to bring the product and its labeling into compliance with the Act. If after a reasonable period of time. the registrant has not made such corrections, the Director may cancel the registration under the provisions of section 4.c. of the Act. Unless cancelled in accordance with this paragraph or with the acquiescence of the registrant, or unless continued in effect in accordance with the provisions of paragraph (i) of this section, the registration of an economic poison shall be cancelled at the end of a period of five years following the date of registration of such economic poison, or at the end of five years following the date of any subsequent registered change in formula or labeling, or at the end of five years following the date of any continuance of registration pursuant to paragraph (i) of this section: Provided, however, That prior to any such cancellation the Pesticides Regulation Division shall send to the registrant a notice of intent to cancel, and, in the event such notice is not sent to the registrant 30 days prior to the expiration of the five-year period, the registration shall remain in effect until 30 days following the date such notice has been sent to the registrant at his latest address submitted to the Pesticides Regulation Division.

(i) Continuance of registration. If a registrant desires to continue the registration in effect, he shall notify the Pesticides Regulation Division in writing and it shall be continued in effect under the same terms as the original registration: Provided, however, That if, on the basis of information available at the time, it appears that the product or its labeling fails to comply with the Act, the registrant shall be so notified and afforded the opportunity to make the necessary corrections. If the corrections are not made, registration will be cancelled as provided in section 4.c. of the Act.

(j) Limitations on registrations. The Director may refuse to register any economic poison or any specific use thereof if, in his opinion, directions and warnings cannot be written which will prevent injury to the general public when the product is used in accordance with warnings and directions or in accordance with commonly recognized practices. If, however, such an economic poison is proposed for certain acceptable uses, the Director may require the label to bear a warning against specific unacceptable uses such as in the home or home garden.

#### GUARANTEES

#### § 362.11 Guarantee of economic poison.

(a) By whom given; effect of guarantee. Any manufacturer, distributor, wholesaler, or other person residing in the United States may furnish to any person to whom he sells an economic poison a guarantee that the economic poison was lawfully registered at the time of sale and delivery to such person, and that the economic poison complies with all the requirements of the Act and of the regulations in this part. The Act provides that penalties for violation of section 3.a. of the Act shall not apply to a person who establishes that he has received a guarantee as specified in the Act.

(b) Reference to guarantee. No reference to a guarantee or suggestion that such a guarantee has been given shall be made in the labeling of any economic poison.

(c) Contents of guarantee. In order to afford effective protection, each guarantee must:

 Be signed by and contain the name and address of the person giving it; and

- (2) State that the economic poison was lawfully registered at the time of sale and delivery and that it complies with all other requirements of the Federal Insecticide, Fungicide, and Rodenticide Act.
- (d) Scope of guarantee. A guarantee may be (1) limited to a specific shipment or other delivery of a product, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or (2) general and continuing, in which case, in its application to any shipment or other delivery of a product it shall be considered to have been given at the date when such product was shipped or delivered by the person giving the guarantee.

(e) Expiration of guarantee. Any guarantee shall expire when the product is repacked or relabeled by the purchaser or when it becomes in violation of the Act or the regulations in this part after shipment or other delivery by the person diving the guarantee.

giving the guarantee.

(f) Forms of guarantee. The following are suggested forms of guarantee:

(1) Limited form for use on invoice or bill of sale.

(Name of guarantor)

that the economic poison herein listed is lawfully registered with the Secretary of Agriculture and that the same complies with all requirements of the Federal Insecticide, Fungicide, and Rodenticide Act.

(Signature and post office address of guarantor)

(Date)

(2) General and continuing form.

The economic poisons comprising each shipment or other delivery hereafter made by \_\_\_\_\_, to or on the order of (Name of guarantor)

(Name and address of person receiving guarantee)

guaranteed to be lawfully registered with the Secretary of Agriculture and to comply with all requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, as of the date of such shipment or delivery.

(Signature and post office address of guarantor)

(Date)

Coloration of Economic Poisons

#### § 362.12 Coloration and discoloration.

The white economic poisons hereinafter named shall be colored or discolored in accordance with this section. The hues, values, and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, 10 East Franklin Street, Baltimore, Md.

(a) Coloring agent. The coloring agent must produce a uniformly colored product not subject to change in color beyond the minimum requirements specified in the regulations in this part during ordinary conditions of marketing or storage, and must not cause the product to be ineffective or result in its causing damage when used as directed.

(b) Arsenicals and barium fluosilicate. Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 8 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(c) Solium fluoride and sodium fluosilicate. Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than 8 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(d) Exceptions. (1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, the Director, after opportunity for hearing, may permit other hues to be used for any particular purpose if he determines that use of the prescribed hues is not feasible for such purpose and that such action will not be injurious to the public.

(2) Any economic poison specified in this part which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dyer as a mothproofing agent, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric may be exempted by the Director from the requirements of section 3.a.(4) of the Act and the requirements of this section.

(3) The economic poison sodium fluoride shall be exempt from the requirements of section 3.a.(4) of the Act and paragraph (c) of this section when (i) it is intended for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods; (ii) coloration of the economic poison in accordance with said requirements will be likely to impart objectionable color characteristics to the finished goods; (iii) the economic poison will not be present in such finished goods in sufficient quantities to cause injury to any person; and (iv) the economic poison will not come into the

hands of the public except after incorporation into such finished goods.

Adulteration and Misbranding

#### § 362.13 Adulteration.

An economic poison is adulterated if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(a) A valuable constituent will be considered as wholly abstracted whenever the designation or representation of the product imports its presence therein and such constituent has been wholly omitted therefrom in the preparation of the product or has been wholly removed from the completed product.

(b) A valuable constituent will be considered as partly abstracted whenever the designation or representation of the product imports its presence therein, and such constituent is not present in the

and such constituent is not present in the usual or customary amount or in the amount indicated in the labeling.

#### § 362.14 Misbranding.

An economic poison or device is misbranded if the article or its labeling is false or misleading to the public in any particular.

(a) Examples of statements or representations in the labeling of an economic poison or device which render it misbranded are the following:

(1) A false or misleading statement concerning composition of the product.

(2) A false or misleading statement concerning the effectiveness of the product as an economic poison or device.

(3) A false or misleading statement about the value of the product for purposes other than as an economic poison or device.

(4) A false or misleading comparison with other economic polsons or devices.

(5) Unwarranted claims as to the safety of the economic poison or its ingredients, including a statement such as "Safe," "Non-poisonous," "Non-toxic," "Non-injurious," or "Harmless" with or without such a qualifying phrase as "When used as directed." Provided, however, That the Director may permit a truthful statement such as "Low in toxicity to warm-blooded animals."

(6) Any statement directly or indirectly implying that the economic poison or device is recommended or endorsed by any agency of the Federal Govern-

ment.

(7) The name of an economic poison which contains two or more principal active ingredients if it suggests the name of one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling.

(8) Prominent reference in the labeling to one or more active ingredients without giving their percentages in immediate proximity thereto or without giving equal prominence to the other active ingredients or to the inert ingredients.

(9) A true statement used in such a way as to give a false or misleading impression to the purchaser.

(b) Justification of false and misleading statements not permitted. (1) The use of any false or misleading statement on any part of the labeling, given as the statement or opinion of any person or based upon such statement or opinion, shall not be justified by the fact that the statement or opinion is actually that of such person.

(2) The use of a false or misleading statement in the labeling cannot be justified by an explanatory statement.

#### ENFORCEMENT

#### § 362.15 Enforcement.

(a) Collection of samples. Samples of economic poisons and devices shall be collected by official inspectors or by any employee of the Federal Government, or of a State or Territory, or political subdivision thereof who has been duly authorized by the Director to collect samples.

(b) Examination of samples. Methods of examination of samples shall be those adopted and published by the Association of Official Agricultural Chemists, where applicable, or such other methods as the Director may find necessary to determine whether the product

complies with the law.

- (c) Notice of apparent violation. (1) If, from an examination or analysis, an economic poison or device appears to be in violation of the Act, a notice in writing shall be sent to the person against whom criminal proceedings are contemplated, giving him 20 days within which to offer such written explanation as he may desire. The notice shall state the manner in which the sample fails to meet the requirements of the Act and the regulations thereunder.
- (2) Any such person may, in addition to his reply to such notice, file within 20 days of its receipt a written request for an opportunity to present his views orally in connection therewith.
- (3) No notice or hearing is required prior to the seizure of any economic poison or device.

#### § 362.16 Notices of judgment.

Publication of notices of judgments of the courts in cases arising under the criminal or seizure provisions of the Act shall be made in the form of notices, circulars, or bulletins as the Director may prescribe.

#### TEMPORARY PERMITS

## § 362.17 Limited shipments for experimental purposes.

Temporary permits not to exceed a period of one year may be issued for shipment of limited amounts of a product which is to be tested further, usually on a larger scale, to determine its limitations. Permits will be issued only for bonafide experimental programs under the supervision of qualified persons. The Director may require the submission of such information and data concerning the product and the program which he deems necessary for the protection of the public. If, in the opinion of the Director, such information has not been

submitted he may, for the protection of the public, refuse to issue the permit.

(a) Articles for which no permit is required. (1) A substance or mixture of substances being put through tests in which the purpose is only to determine its value for economic poison purposes or to determine its toxicity or other properties, and where the user does not expect to receive any benefit in pest control from its use, is not considered an economic poison within the meaning of section 2a of the Act. Therefore, no permit under the Act is required for its shipment.

(2) An economic poison shipped or delivered for experimental use by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons shall not be subject to the provisions of the Act and the regulations in this part.

- (b) Articles for which permit is required. (1) An economic poison shipped or delivered for experimental use by qualified persons but not under the supervision of a Federal or State agency authorized by law to conduct research in the field of economic poisons, for which a permit has been issued by the Director pursuant to the provisions of this section, shall otherwise be exempt from the provisions of the Act and of the regulations in this part. Permits will be of two types, specific and general. A specific permit will be issued to cover a particular shipment on a specified date to a named person. A general permit will be issued to cover more than one shipment over a period of time to the same or different persons.
- (2) If an economic poison is to be tested in such a manner that residues may result in or on food or feed, a permit for shipment will not be issued unless:

(i) Sufficient data are submitted to the Director to show that no residue will be present on food or feed involved in the experimental program or

(ii) A tolerance or exemption from the need of a tolerance or a temporary tolerance or exemption from the need of a temporary tolerance, has been established by the Food and Drug Administration to cover any detectable residue which may be present on food or feed involved in the experimental program and sufficient data are submitted to the Director to show that such program will not result in any residue in excess of any such tolerance or

(iii) The food or feed derived from the experimental program will be destroyed or fed only to laboratory animals or otherwise disposed of in a manner which will protect the public and which

is approved by the Director.

(3) A permit for shipment of any experimental economic poison for testing in any place likely to be frequented by people will be granted only if it is clearly shown in the application for such permit that the applicant's instructions for use reasonably assure the avoidance of injury to all persons concerned.

(4) All applications for permits covering shipments for experimental use shall be filed in duplicate with the Pesticides Regulation Division, Agricultural Research Service, United States Depart-

ment of Agriculture, Washington, D.C., 20250, and must be signed by the shipper and must contain the following:

(i) An affidavit to the effect that food or feed derived from the experimental program will not be used or offered for consumption or sale for consumption, except by laboratory or experimental animals if illegal residues are present in or on such food or feed.

(ii) Name and address of the shipper and place or places from which the ship-

ment will be made.

(iii) Proposed date of shipment or proposed shipping period not to exceed one year.

- (iv) A statement of the composition of material to be covered by the permit which should apply to a single material or group of closely allied formulations of the material.
- (v) A statement of the approximate quantity of material to be shipped.
- (vi) Available data or information, or reference to available data or information, on the toxicity of the economic poison.
- (vii) A statement of the nature of the proposed experimental program, including designation of the type of pests or organisms to be experimented with, the crops or animals on which the economic poison is to be used, a statement of the dates during which the proposed experimental program will be conducted, and the states or geographical areas where it is proposed to conduct the program, and including the results of previous tests where necessary to justify the issuance of a permit for the quantity requested.

(viii) The percentage of the total quantity of material specified under subdivision (v) of this subparagraph which will be supplied without charge to the user.

(ix) A statement that the economic poison is intended for experimental use only.

(x) Proposed labeling which must bear (a) the prominent statement "For Experimental Use Only" on the container label and any accompanying circular or other labeling, (b) a warning or caution statement if in the opinion of the Director it is necessary, which statement shall, if complied with, be adequate in his opinion, for the protection of those who may handle or be exposed to the experimental formulations, (c) the name and address of the applicant for the permit, (d) the name or designation of the formulation, (e) an ingredient statement as prescribed in § 362.7, and (f)necessary directions for use including crops or sites to be treated, limitations on dosage to be used, and if the economic poison is to be tested on food or feed crops the number of days required between last application and harvest.

(5) The Director may limit the quantity of economic poison covered by a permit to such less quantity than requested as he may determine if the available information on effectiveness, or toxicity or other hazards, is not sufficient to justify the scope of experimental use proposed in the application, or may make such other limitations in the permit as he may determine to be necessary for the pro-

tection of the public.

(6) Reports on experimental program: During the period in which a permit is effective, the holder shall submit to the Director periodic reports regarding the status of the experimental program. Reports shall be submitted at 3-month intervals and at the end of the experimental program. The Director may at any time request additional reports on the experimental program if, in his opinion, such reports are necessary for the protection of the public. These reports shall include the following information:

(i) Amount of the economic poison shipped during reporting period.

(ii) Name and address of consignee of

each shipment.

(iii) A summary of data on effectiveness, phytotoxicity, or other pertinent information obtained during the reporting period.

(iv) Any additional data on residues or analytical methods obtained during

the reporting period.

(v) Any additional data on toxicity obtained during the reporting period.

(7) An economic poison shipped under a permit shall not be offered for general retail sale.

(c) General permit for economic poisons for experimental use which are also subject to the new drug requirements of the Federal Food, Drug, and Cosmetic Act. (1) Notwithstanding the provisions of paragraph (b) of this section, a general permit is hereby issued under section 7.a.(4) of the Act to the manufacturers and shippers of economic poisons for experimental use only, to ship such economic poisons: Provided, (1) That the product is a "new drug" within the meaning of section 201(p) and 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. sec. 321(p) and sec. 355); (ii) that it is subject to, and the manufacturer or shipper complies with, the provisions of section 505(i) of said Act (21 U.S.C. sec. 355(i)) and § 130.3 of the regulations (21 CFR 130.3) thereunder: and (iii) that the documents referred to in said § 130.3 shall be made available for inspection upon the request of any officer or employee of the Agricultural Research Service of the United States Department of Agriculture at any reasonable time within two years after the introduction of the product into interstate commerce.

(2) The general permit referred to in the preceding subparagraph shall apply only insofar as the experimental uses are for drug purposes within the meaning of the Federal Food, Drug, and Cosmetic Act. It shall not apply to other experimental uses even though the product may be intended for both drug and non-

drug uses.

(d) Cancellation of permits. Any permit for shipment for experimental use > may be canceled at any time for any violation of the terms thereof or if it shall appear to the Director that the permit should be canceled for the protection of the public.

§§ 362.18-362.24 [Reserved] DECLARATION OF PESTS

§ 362.25 Forms of plant and animal life and viruses declared to be pests.

(a) Each of the following forms of plant and animal life and viruses is declared to be a pest under the Act when it exists under circumstances that make it injurious to plants, man, domestic animals, other useful vertebrates, useful invertebrates, or other articles or substances:

Mammals, including but not limited to dogs, cats, moles, bats, wild carnivores, armadillos, and deer;

Birds, including but not limited to starlings, English sparrows, crows, and black-

Fishes, including but not limited to the jawless fishes such as the sea lamprey, the cartilaginous fishes such as the sharks, and the bony fishes such as the carp;

Amphibians and reptiles, including but not limited to poisonous snakes;

Aquatic and terrestrial invertebrates, including but not limited to slugs, snails, and crayfish;

Roots and other plant parts growing where

not wanted; Viruses, other than those on or in living man or other animals.

Any interested person who wishes to submit written data, views, or arguments concerning the proposed revision of the regulations may do so by filing them with the Director, Pesticides Regulation Division, Agricultural Research Service, United States Department of Agriculture, Washington, D.C., 20250, not later than 20 days after publication of this notice in the Federal Register. Written material submitted in connection with this proposal will be filed with the Hearing Clerk of the Department of Agriculture for public viewing.

Done at Washington, D.C., this 10th day of January 1964.

> M. R. CLARKSON, Acting Administrator, Agricultural Research Service.

[F.R. Doc. 64-392; Filed, Jan. 15, 1964; 8:45 a.m.1

## FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Parts 21, 91 ]

[Docket Nos. 14895, 15233; FCC 64-14]

MICROWAVE STATIONS TO RELAY TELEVISION SIGNALS TO COMMU-**NITY ANTENNA SYSTEMS** 

#### Extension of Time for Filing Comments

In the matters of amendment of Subpart L, Part 91 (former Part 11), to adopt rules and regulations to govern the grant of authorizations in the Business Radio

Service for microwave stations to relay television signals to community antenna systems, Docket No. 14895; amendment of Subpart I. Part 21, to adopt rules and regulations to govern the grant of authorizations in the Domestic Public Point-to-Point Microwave Radio Service for microwave stations used to relay television broadcast signals to community antenna television systems, Docket No. 15233.

'At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 8th day of

January 1964;

The Commission has before it for consideration the petition for postponement of time for filing comments in the above-entitled proceedings, filed by National Community Television Association, Inc. (NCTA). NCTA asserts that it is in the process of collecting data of the type specifically called for by the Commission in its Notice of December 11, 1963 (see par. 9); that a target date of February 29, 1964 was established to complete this work; and that it will then take until March 16, 1964, to collate the material. Accordingly, it requests that the time for filing comments be postponed from January 22, 1964 to March 16, 1964 (with reply comments postponed to April 6, 1964).

The Commission, as stated, is very desirous of obtaining detailed factual data on these important issues. At the same time, the Commission wishes, as rapidly as possible, to resolve these outstanding proceedings and to establish definitive policy criteria to govern the grant of authorizations in these services. The Notice in Docket No. 14895 was first issued in December of 1962. Further, applications in the categories here involved will not be acted upon until the conclusion of these proceedings, with the exception that applicants may receive a grant, if they agree to accept the proposed conditions. In the circumstances, it is clearly desirable to expeditiously resolve the rule making proceedings.

Balancing there considerations, we have determined to extend the filing date of comments to February 24 and the date for reply comments until March 16, 1964. In this way, we would hope and expect to receive the great portion of factual material requested in our Notice and to resolve the proceedings in an expeditious manner.

Accordingly, it is ordered, That the date for filing comments in the aboveentitled proceedings is extended to on or before February 24, 1964, and the date for filing reply comments is extended to on or before March 16, 1964.

Released: January 13, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, Secretary.

[F.R. Doc. 64-414; Filed, Jan. 15, 1964; 8:49 a.m.]

## **Notices**

## DEPARTMENT OF COMMERCE

### Maritime Administration AMERICAN EXPORT LINES, INC.

#### Notice of Application

Notice is hereby given that American Export Lines, Inc., has filed an application for a waiver under the provisions of section 804 of the Merchant Marine Act, 1936, as amended, to permit said company to act as agent to perform certain husbanding services for the foreign-flag ship "M/V Aurelia" while said ship is using Export's Pier 84, North River, New York, during the ship's five calls at New York now scheduled during the period June through September 1964. The arrangement does not involve the booking of cargo or passengers for the vessel.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Administrator should submit same in writing, in triplicate, to the Secretary, Maritime Administration, Washington 25, D.C., by close of business on January 23, 1964. The Maritime Administrator will consider these views and take such action with respect thereto as may be deemed appropriate.

Dated: January 13, 1964.

By order of the Maritime Administrator.

JAMES S. DAWSON, Jr., Secretary.

[F.R. Doc. 64-450; Filed, Jan. 15, 1964; 8:50 a.m.1

### DEPARTMENT OF THE TREASURY

Office of the Secretary [AA 643.3-m]

#### CAST IRON SOIL PIPE FROM **AUSTRALIA**

#### Determination of Sales at Less Than Fair Value

JANUARY 8, 1964.

A complaint was received that cast iron soil pipe from Australia was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that cast iron soil pipe from Australia is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. It was determined from the evidence presented that the proper comparison for fair value purposes is between purchase price and adjusted home market price.

Purchase price was computed on the basis of the C&F West coast port selling prices to the United States. Ocean

freight, inland freight, wharfage charges, and the cost of packing were deducted therefrom to arrive at the unpacked, exworks, sales price.

Calculation of adjusted home market price was based on the weighted average of home market selling prices delivered f.i.s. (Free Into Store) various capital cities. A deduction was made from these prices to allow for a cash discount applicable to home market sales. The freight and insurance charges together with the cost of packing which are included in such prices were also deducted therefrom to arrive at the unpacked, ex-works price. An allowance was made to adjust home market price for advertising expenses incurred by the producer on behalf of its customers. Home market price was further adjusted to account for differences in production costs between the soil pipe manufactured for home consumption and that which is exported to the United States.

Purchase price was found to be lower than adjusted home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL]

JAMES A. REED, Assistant Secretary of the Treasury.

[F.R. Doc. 64-407; Filed, Jan. 15, 1964; 8:49 a.m.]

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management SOUTH DAKOTA

#### **Small Tract Opening**

JANUARY 8, 1964.

1. Pursuant to authority delegated to the State Director by Bureau Order No. 684, § 1.5(c), dated August 28, 1961, and further delegated to me by the State Director (F.R. Vol. 26, No. 202, October 19, 1961), and in accordance with 43 CFR 257.6(e) 4, I hereby open the following described land to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended;

#### BLACK HILLS MERIDIAN

T. 4 N., R. 3 E., Sec. 5, W½NW¼SW¼NE¼, NW¼SW¼ SW¼NE¼, S½NW¼, NW¼NW¼NW¼ SW¼, lot 9;

Sec. 6, S½NE¼, NE¼, lot 10, all except that portion of NW¼SE¼NE¼ of sec. 6 lying south of Nevada Gulch road, N½N½. NE'4SE'4, lots 3, 5, 6, 19 and 20; Sec. 7, lot 1;

Sec. 8, NW¼NW¼NW¼NW¼; Sec. 15, S½NW¼NE¼ and SW¼NE¼; Sec. 17, lot 12 and SW¼NW¼SE¼.

T. 5 N., R. 3 E. Sec. 21, lot 7; Sec. 32, 51/2.

2. The lands have not been classified for disposition as small tracts. Applica-

tions for the lands will be considered on their merits in accordance with the criteria set forth in 43 CFR 257.2.

3. Applicants must file an application in duplicate on Form 4-776, together with a petition on Form 4-1677, with the Manager, Land Office, 1245 North 29th Street, Billings, Montana, 59101, within 90 days of the publication date of this order. The area will be closed to Small Tract filing without further notice at the expiration of this 90-day period.

4. The petition and application must be accompanied by a filing fee of \$10.00 and the advanced rental payment of \$25.00 for nonbusiness and \$100.00 for business site applications. All filing fees will be retained by the United States.

> ROBERT A. JONES, Chief, Division of Lands and Minerals.

[F.R. Doc. 64-408; Filed, Jan. 15, 1964; 8:49 a.m.]

[Washington 05008]

#### WASHINGTON

#### Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, United States Department of Agriculture, has filed an application, Serial Number Washington 05008, for the withdrawal of the lands described below, from all forms of location, prospecting, or entry under the general mining laws. The applicant desires the land for public outdoor recrea-

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officers of the Bureau of Land Management, Department of the Interior, 680 Bon Marche Building, Spokane, Washington.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Forest Service.

The determination of the Secretary on the application will be published in the 412 **NOTICES** 

FEDERAL REGISTER. A separate notice will be sent to each interested party of record. If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application

WILLAMETTE MERIDIAN

UMATILLA NATIONAL FOREST Kelly Camparound

T. 7 N., R. 42 E., Sec. 2: Lot 1. T. 8 N., R. 42 E.,

Sec. 35: S1/2S1/2SE1/4SE1/4.

Crooked Creek Cooperative Cabin Site

T. 7 N., R. 42 E.,

Sec. 32: NE1/4NW1/4SE1/4.

Teal Spring Campground

T. 8 N., R. 42 E.

Sec. 8: W1/2SW1/4NE1/4.

Spruce Spring Campground

T. 8 N., R. 42 E.,

Sec. 15: NW¼NW¼NW¼; Sec. 16: NE¼NE¼NE¼.

Lost Trail Campground

T. 8 N., R. 42 E.,

Sec. 23: NE1/4NW1/4SW1/4.

Big Spring Campground

T.9 N., R. 42 E., Sec. 27: W%W%SW%NW%; Sec. 28: E%E%SE%NE%.

Indian Camp Campground

T. 6 N., R. 39 E.

Sec. 14: E1/2 NW1/4 NW1/4.

Godman Spring Campground

T. 7 N., R. 40 E.,

Sec. 10: S1/2N1/2SW1/4NE1/4, SW1/4SW1/4NE1/4. Edmiston Spring Campground

T. 8 N., R. 40 E.,

Sec. 23: SW1/4NE1/4NE1/4, NW1/4SE1/4NE1/4.

Stockade Spring Campground

T. 9 N., R. 40 E.

Sec. 35: SE1/4SE1/4SW1/4, SW1/4SW1/4SE1/4. Teepee Campground

T. 7 N., R. 41 E., Sec. 6:  $SE\frac{1}{4}$  Lot 2.

Misery Spring Campground

T. 7 N., R. 42 E.

Sec. 1: NE1/4 Lot 8.

Wickiup Spring Campground

T. 8 N., R. 43 E., Sec. 28: S½S½SW¼SW¼; Sec. 33: N½NW¼NW¼.

The areas described aggregate approximately 238.88 acres.

> John E. Burt, Jr., Officer in Charge.

[F.R. Doc. 64-402; Filed, Jan. 15, 1964; 8:48 a.m.]

## DEPARTMENT OF HEALTH. EDU-CATION. AND WELFARE

Food and Drug Administration AMERICAN BITUMULS & ASPHALT CO. Notice of Filing of Petition Regarding

Food Additive Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348

(b)(5)), notice is given that a petition (FAP 881) has been filed by American Bitumuls & Asphalt Company, 320 Market Street, San Francisco 20, California, proposing the issuance of a regulation to provide for the safe use of asphalt as a component of internal sizing of paper and paperboard intended for use in contact with dry nonfatty foods and also for use in the bulk packaging of raw fruits and raw vegetables. It is proposed that the asphalt be used at levels not to exceed 5 percent by weight of dry paper and paperboard fibers. It is further proposed that the asphalt be steam and vacuum refined to meet the following specifications:

Softening point 190° F.–200° F. as determined by ASTM Method D-36.

Penetration at 77° F. not to exceed 0.3 millimeter as determined by ASTM Method D-5. Maximum weight loss not to exceed 3 percent when distilled to 700° F., nor to exceed an additional 1.1 percent when further dis-tilled between 700° F. and thermal decomposition.

Dated: January 9, 1964.

J. K. KIRK.

Assistant Commissioner of Food and Drugs.

[F.R. Doc. 64-393; Filed, Jan. 15, 1964; 8:45 a.m.]

### **CIVIL AERONAUTICS BOARD**

[Docket 9955 etc.]

#### AMERICAN FLYERS AIRLINE CORP. ET .AL.

#### Notice of Hearing

Application of American Flyers Airline Corp., et al., common control and lease transaction. Reference: Order E-14457.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on January 21, 1964, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., January 13, 1964.

[SEAL]

FRANCIS W. BROWN, Chief Examiner.

[F.R. Doc. 64-411; Filed, Jan. 15, 1964; 8:49 a.m.]

[Docket 11278 etc.; Order No. E-20354]

#### TRANSPORTATION CORPORATION OF AMERICA

New York-San Juan Standard and Deferred General Commodity Freight Rates; Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of January 1964.

By tariff revisions marked to become effective January 20, 1964 and to expire with January 19, 1965, the Transporta-

tion Corporation of America, also operating as Trans Caribbean Airways (Trans Caribbean), proposes reduced standard and deferred general commodity air freight rates at weight breaks of 10,000 pounds and over between New York and San Juan.<sup>2</sup> The reduced standard general commodity rates would range from 8 cents per pound with a minimum weight of 25,000 pounds to 6 cents per pound with a minimum weight of 60,000 pounds, southbound, and from 7.5 cents per pound with a minimum weight of 25,000 pounds to 6 cents per pound with a minimum weight of 60,000 pounds, northbound. The proposed standard general commodity rates represent a maximum reduction of 29.4 percent from Trans Caribbean's lowest existing southbound general commodity rate, and a maximum reduction of 25 percent from Trans Caribbean's lowest current northbound general commodity rate. The proposed deferred air freight rates are applicable to freight transported on a space available basis only and shipments moving under these rates would not be released at the destination airport prior to 7:00 p.m. on the third or fourth night after receipt of the shipment at origin airport. The proposed deferred air freight rates would be approximately 20 percent below the current standard general commodity rates, and represent the first effort to introduce such rates in this market.

Complaints requesting investigation and suspension of the proposed standard general commodity rates have been filed by Eastern Air Lines, Inc. (Eastern), Pan American World Airways, Inc. (Pan American) and Riddle Airlines, Inc. (Riddle). In addition, Eastern and Riddle request investigation and suspension of the proposed deferred air freight rates. In support of their complaints against the proposed standard and deferred general commodity freight rates, Eastern and Riddle state generally that Trans Caribbean's proposal derives from that carrier's attempt to utilize DC-8F aircraft not now needed in MATS operations; that the proposed rates are uneconomic, constitute destructive competition, and will result in a rate war; that the costs set forth in Trans Caribbean's supporting statement appear to be understated: that the proposals will not generate new traffic from surface carriers because of lower ocean rates; that the rates proposed for deferred air freight are below the level established for such service by the Board; that Trans Caribbean does not have sufficient warehouse facilities to provide a deferred service; and that a 3-day deferred service is too low a minimum since an ocean trip takes 7 days. Pan American's complaint, which is limited to the proposed standard general commodity rates, states that the 6 cent rate is substantially below cost; that even Trans Carib-

<sup>&</sup>lt;sup>1</sup>To Trans Caribbean Airways, Inc. series, C.A.B. No. 28.

<sup>&</sup>lt;sup>2</sup>In conjunction with this proposal Trans Caribbean has also filed proposed off-peak fares applicable to the passenger compart-ment of the DC-8F aircraft during limited hours of the weekdays. The complaints and answers have been addressed to both the rate and fare proposals. The Board is con-sidering the passenger fare proposal, and complaints thereto, in a separate order issued concurrently herewith. See Order E-20355, adopted January 13, 1964.

bean's forecast, which is subject to several corrections, provides a profit which is less than that required to earn a fair return on investment; that the proposal is a rate war which aggravates an already unfair rate structure; that rate reductions for very large shipments do not benefit the general public, but merely serve to increase the forwarder's spread; and that a 6 cent standard general commodity rate is not necessary to penetrate the surface cargo market, since Trans Caribbean's proposed deferred freight rates allow full opportunity to exploit the potential of cargo now moving by surface.

Answers have been filed by Trans Caribbean and by the Commonwealth of Puerto Rico (Commonwealth).3 In its answer, which requests that the com-plaints be dismissed, Trans Caribbean states that its proposed service will not be sporadic, since MATS demand can easily be met by one of Trans Caribbean's DC-8F's; that the great cargo capacity of the DC-8F, over twice that of the DC-8's now used in passenger service in this market, requires the development of new traffic through promotional devices which will not dilute existing revenues and will permit more adequate utilization of these aircraft; that the instant filing is not a further round in the past cargo rate battle, but rather a completely new service designed to attract traffic not now moving by air; that the allegations in the complaints to the effect that the proposals are uneconomic all ignore the basic purpose of the proposals, which is to increase utilization of existing aircraft, facilities and personnel at times when they cannot otherwise be used economically; that there are several commodities moving by ocean transportation which are suitable for transportation by air and which the proposed deferred rates are intended to divert; that the Board has permitted deferred rates in domestic air transportation which yield less than would the proposed deferred rates: that since there are no present deferred rates in this market there are compelling reasons for permitting this experiment; that while the reduced standard general commodity rates for higher weight breaks would be available to airfreight forwarders, such is not their primary purpose and it is doubtful that forwarders could make any substantial use of these rates for existing airfreight; and that the purpose of the new standard general commodity weight breaks at reduced rates is an effort to penetrate the surface cargo now moving by ocean vessel in vans which carry between 20,000-40,000 pounds of freight, and are loaded directly onto ships. The Commonwealth's answer, which opposes suspension but does not oppose investigation of the proposed rates, states that air cargo has grown at a slower rate than ocean freight in this market; that while air carriers cannot be competitive with water carriers for all cargo, they should be permitted the opportunity to attract some of the ocean freight; and that the Trans Caribbean proposal is the first meaningful effort to attract to air a significant portion of the freight which now moves by surface.

In the recent past the Board has on several occasions expresed its concern over what appears to be a rate war in the mainland-San Juan market, and investigations have been instituted of several presently effective rates.4 The instant standard general commodity rate proposal appears to establish uneconomic rates which may further debase the rate structure and result in losses to all the carriers in the market. A load factor in excess of 100 percent may be required to break-even under the 6 cent standard general commodity rate. It appears that, at Trans Caribbean's forecast load factor of 70 percent, none of the proposed standard general commodity rates meets break-even need. Under these circumstances, the Board will institute an investigation of the proposed standard general commodity rates, and these rates will be suspended pending the investigation.

The proposed deferred general commodity freight rates offer a possibility of penetrating the ocean cargo market at a competitive rate which should not result in any substantial diversion of existing air freight. Although the tariff provides for a minimum 3-day release period,5 in view of the 7:00 p.m. release time it appears that in most instances release will not be effected until the 4th or 5th mornings. The 6 cent deferred rate meets the incremental cost of providing the service and makes a substantial contribution to total transportation costs. The proposed deferred rates do not appear prima facie unreasonable for traffic carried on a space available basis. The Board will therefore permit the deferred rates to become effective. However, in view of the pending San Juan rate investigation in Docket 11278, the Board will institute an investigation of the deferred rates and consolidate such investigation into Docket 11278. The Board has further directed its staff to obtain traffic reports of the deferred traffic.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof: It is ordered, That

1. An investigation be instituted to determine whether the rates, charges and provisions described below, including subsequent revisions and reissues thereof, are, or will be, unjust or unreasonable. unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates. charges and provisions:

Transportation Corporation of America tariff C.A.B. No. 28 (Trans Caribbean Airways, Inc., series):

On 10th and 12th Revised Pages 18-A, the rates subject to minimum weights of 25,000 pounds, 30,000 pounds, 40,000 pounds, 50,000 pounds and 60,000 pounds applying from New York, N.Y., or Newark, N.J., to San Juan, P.R., and the rates subject to minimum weights of 25,000 pounds, 30,000 pounds, 45,000 pounds and 60,000 pounds applying from San Juan, P.R., to New York, N.Y., or Newark, N.J.;

All rates, charges and provisions on Original Page 19-A;

Rule No. 13 on 1st and 2d Revised Pages 16-A, Original Pages 16-B and 16-C, and 1st Revised Page 16-C.

2. Pending hearing and decision by the Board, the rates subject to minimum weights of 25,000 pounds, 30,000 pounds, 40,000 pounds, 50,000 pounds and 60,000 pounds applying from New York, N.Y., or Newark, N.J., to San Juan, P.R., and the rates subject to minimum weights of 25,000 pounds, 30,000 pounds, 45,000 pounds and 60,000 pounds applying from San Juan, P.R., to New York, N.Y., or Newark, N.J., on 10th and 12th Revised Pages 18-A of Transportation Corporation of American tariff C.A.B. No. 28 (Trans Caribbean Airways, Inc., series) are suspended and their use deferred to and including April 18, 1964, unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission of the Board.

3. The investigation ordered herein is consolidated into the New York-San Juan Cargo Rates Investigation, Docket 11278, et al.

4. Except to the extent granted herein, the requests contained in the complaints of Riddle Airlines, Inc. in Docket 14926, of Eastern Air Lines, Inc., in Docket 14929, and of Pan American World Airways, Inc. in Docket 14932, insofar as they relate to the freight rates and provisions described in ordering paragraphs 1 and 2 above, are denied, and the complaints therein are dismissed.

5. A copy of this order be filed with the aforesaid tariffs and be served upon Eastern Air Lines, Inc., Pan American World Airways, Inc., Riddle Airlines, Inc., Transportation Corporation of America, and the Commonwealth of Puerto Rico. parties in Docket 11278, et al.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON. Secretary.

[F.R. Doc. 64-412; Filed, Jan. 15, 1964; 8:49 a.m.]

[Docket 14962; Order No. E-20355]

#### TRANSPORTATION CORPORATION OF AMERICA

#### New York-San Juan Night Tourist Fares; Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of January, 1964:

<sup>&</sup>lt;sup>3</sup> The Commonwealth's late-filed answer was accompanied by a request that it be permitted to file its answer after the due date. In view of the matters set forth in the request, the Board will consider the Commonwealth's answer on its merits.

New York-San Juan Cargo Rates Investigation, Docket 11278, et al.

Applies 4 days a week (shipments received Sunday through Tuesday); the re-maining 3 days' receipts have a minimum 4-day release period.

By tariff revisions 1 marked to become effective January 20, 1964, and to expire with January 19, 1965, the Transportation Corporation of America, also operating as Trans Caribbean Airways (Trans Caribbean), proposes a night tourist service between New York and San Juan to be operated in the rear compartment of DC-8F aircraft in a combination passenger/cargo configuration.2 The proposed service would be operated weekdays with departures southbound between 11:00 p.m. and 6:00 a.m. and northbound between 2:00 a.m. and 6:00 p.m. Except for limited departure times and the use of aircraft in combination passenger/cargo configuration, the proposed service is similar to Trans Caribbean's effective standard tourist service. The proposed night tourist service would have a directional fare of \$54.00 southbound and \$45.00 northbound, which represent reductions of 11 percent and 26 percent, respectively, from the currently effective standard tourist fare of \$60.75.

Complaints requesting investigation and suspension of the fare proposal have been filed by Eastern Air Lines, Inc. (Eastern) and Pan American World Airways, Inc. (Pan American). Eastern states that the Trans Caribbean filing is prompted by spare DC-8Fs purchased for MATS operations and that the proposed service will be sporadic as MATS demands vary; that the proposal comes after three lengthy fare proceedings in which the Board found the \$60.75 fare reasonable; that the fares will result in diversion rather than generation because the market is not so sensitive to fare changes; that the proposal does not meet the Board's standards for off-peak services; and that the fares are discriminatory because they are directional and are different fares for different hours. Pan American states that the Board sustained the reasonableness of the \$60.75 fare in the Puerto Rico Fare Investigation, Docket 9523, substantially in reliance on Trans Caribbean's presentation; that Trans Caribbean's exhibits in Docket 9523 showed that the carrier needed a profit of \$1,155 per one-way trip to earn 10.5 percent return on investment whereas Trans Caribbean's supporting statement accompanying the instant proposal shows a profit of only \$168.00; that errors in the supporting statement could more than eliminate the alleged \$168.00 profit; that other carriers would file competitive tariffs, causing heavy losses to all; that the proposal is discriminatory because of the directional fare; that the off-peak fare will be ineffective in encouraging traffic to move at the proposed hours; and that even if the off-peak fare does level the traffic flow, this is diversionary and not developmental.

Answers have been filed by Trans Caribbean and the Commonwealth of Puerto Rico (Commonwealth).3 In its answer, which requests that the complaints be dismissed, Trans Caribbean states that its proposed service will not be sporadic since the MATS demand can easily be met by one of Trans Caribbean's DC-8F's; that the experience of the carriers which in the past have scheduled flights during the weekday hours proposed by Trans Caribbean for its night tourist service demonstrates the off-peak nature of the service; that the lower night tourist fares are justified because the fares would apply in the rear compartment (usually considered less desirable seating on a jet) and are restricted to weekday off-peak hours; that directional night tourist fares (lower fare northbound than southbound) are justified because the northbound departure hours, between 4:00 a.m. and 6:00 a.m., will make these flights less attractive than the southbound departure hours between 11:00 p.m. and midnight, and a more substantial incentive is needed to induce passengers to use the northbound flights; and that the allegations in the complaints to the effect that the proposals are uneconomic all ignore the basic purpose of the proposals which is to increase utilization of existing aircraft, facilities and personnel at times when they cannot otherwise be used economically. The Commonwealth's answer, which also requests dismissal of the complaints, states that the Board's investigation of Puerto Rico passenger fares in Docket 9523 provides no basis for rejecting Trans Caribbean's current proposal because of the age of that record and because the proposed fares would be offered during inconvenient hours; and that the instant proposal is consistent with the Board's directive in certificating Trans Caribbean into this market for the express purpose of providing the lowest possible fare consistent with the Board's standards of reasonableness.

While Eastern contends that the times during which the proposed fares would be offered are not off-peak, it appears that in the past less than 10 percent of the available seats and substantially less than 10 percent of the traffic were related to weekday departures at the proposed hours. The Board has therefore determined to view the proposal as a service to be offered at inconvenient departure hours. The Board will permit the southbound fare of \$54.00 to become effective during the one year experimental period. It appears that if Trans Caribbean achieves its estimated load factor of 70 percent the \$54.00 fare will meet full costs and will make some contribution to profits. Trans Caribbean is expected to maintain adequate records of its experience under this fare so that the Board will have a basis for reviewing the night tourist fare at the expiration of one year if Trans Caribbean should elect to renew it. However, the Board will investigate the proposed \$45.00 northbound fare, and suspend that fare during the period of investigation, because of the low fare proposed and the substantial question of discrimination presented by such directional fare. It appears that with a 70 percent load factor the proposed \$45.00 fare would not meet breakeven costs, might result in substantial diversion of standard-fare traffic, and would debase the fare structure in this market. The discrimination inherent in the directional fare proposal appears unjust, since night tourist traffic moving in opposite directions under substantially the same circumstances and conditions would travel at different fares.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof: It is ordered, That

1. An investigation be instituted to determine whether the One-Way Night Tourist Fare of \$45.00 from San Juan, P.R., to New York, N.Y., or Newark, N.J., on 2d Revised Page 7-B, and Rule No. 12(D) (only insofar as it applies to the above fare) on 21st Revised Page 4, of Transportation Corporation of America tariff C.A.B. No. 26 (Trans Caribbean Airways, Inc., series) is, or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and if found to be unlawful to determine and prescribe the lawful fare and provisions;

2. Pending hearing and decision by the Board, the fare and tariff provisions described in ordering paragraph 1. above are suspended and their use deferred to and including April 18, 1964, unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission of the Board:

3. The complaints of Eastern Air Lines, Inc. in Docket 14929, and Pan American World Airways, Inc. in Docket 14932, with respect to the proposed night tourist service, to the extent granted are consolidated herein;

4. The investigation ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

5. A copy of this order be filed with the aforesaid tariffs and be served upon the Commonwealth of Puerto Rico, Eastern Air Lines, Inc., Pan American World Airways, Inc., and Transportation Corporation of America, which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-413; Filed, Jan. 15, 1964; 8:49 a.m.]

<sup>&</sup>lt;sup>1</sup>To Trans Caribbean Airways, Inc., series, C.A.B. No. 26.

<sup>&</sup>lt;sup>2</sup>In conjunction with this proposal Trans Caribbean has also filed new standard general commodity rates and deferred freight rates. The complaints and answers have been addressed to both the fare and rate proposals. The Board is considering the freight rate proposals, and complaints thereto, in a separate order issued concurrently herewith. See Order E-20354, adopted Jan. 13, 1964.

<sup>&</sup>lt;sup>3</sup>The Commonwealth's late-filed answer was accompanied by a request that it be permitted to file its answer after the due date. In view of the matters set forth in the request, the Board will consider the Commonwealth's answer on its merits.

<sup>&#</sup>x27;The Board would permit Trans Caribbean to establish a northbound night tourist fare at the same level as the southbound night tourist fare.

### FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 15264]

#### C. MONK

#### Order To Show Cause

In the matter of Dr. C. Monk, San Jose, California, order to show cause why there should not be revoked the license for radio station WT-8267 aboard the Vessel "Nirvana."

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.89, formerly § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows: Official Notice of Violation dated August 14, 1963, alleging violation of § 8.368(e) (now § 83.368(e)) of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to follow-up letters dater September 3 and November 13, 1963, served upon him; and

It further appearing, that, in view of the foregoing, the licensee has repeatedly violated § 1.89 of the Commission's rules;

It further appearing, that the violations of § 1.89 of the Commission's rules and the related facts create apparent liability by the respondent to a monetary forfeiture of \$100 under section 510 of the Communications Act of 1934, as amended, and § 1.80 of the Commission's rules; and also subject the license of the above-captioned station to revocation under the provisions of section-312 of the Communications Act of 1934, as amended; but further proceedings in this Docket should be limited to action looking toward a determination as to whether an order of revocation should be issued:

It is ordered, this 10th day of January 1964, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.331(b) (8) of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by certified mail-return receipt requested to the said licensee at his last known address of 2015 Clarmar, San Jose, California.

Released: January 13, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, Secretary.

8:50 a.m.]

[Docket No. 15273]

#### NIKE T.V.

#### Order To Show Cause

In the matter of James E. Gridley, d/b as NIKE T.V., Wellsville, New York, order to show cause why there should not be revoked the license for Radio Station KID-1638 in the Citizens Radio Service.

The Commission, by the Chief, Safety and Special Radio Services Bureau, under delegated authority, having under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing, that, pursuant to § 1.89, formerly § 1.76 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee at his address of record as follows: Official Notice of Violation dated November 5, 1963, alleging violation of § 19.61 (a) and (f) (now § 95.81 (a) and (f)) of the Commission's rules.

It further appearing, that said licensee did not reply to such communication or to a follow-up letter dated November 26, 1963, also mailed to the licensee at his address of record; and

It further appearing, that in view of the foregoing, the licensee has repeatedly violated § 1.89 of the Commission's rules: and

It further appearing, that the violations of § 1.89 of the Commission's rules and the related facts create apparent liability by the respondent to a monetary forfeiture of \$100 under section 510 of the Communications Act of 1934, as amended, and § 1.80 of the Commission's rules; and also subject the license of the above-captioned station to revocation under the provisions of section 312 of the Communications Act of 1934, as amended; but further proceedings in this Docket should be limited to action looking toward a determination as to whether an order of revocation should be issued;

It is ordered, This 10th day of January 1964, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and § 0.331(b)(8) of the Commission's rules, that the said licensee show cause why the license for the above-captioned radio station should not be revoked, and appear and give evidence in respect thereto at a hearing to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this Order by Certified Mail-Return Receipt Requested to the said licensee at his last known address of 143 West State Street, Wellsville, New York.

Released: January 13, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, Secretary.

[F.R. Doc. 64-417; Filed, Jan. 15, 1964; [F.R. Doc. 64-418; Filed, Jan. 15, 1964; 8:50 a.m.]

#### AMERICAN COLONIAL BROAD-CASTING CORP.

#### Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In re application of American Colonial Broadcasting Corporation, Ponce, Puerto Rico, Docket No. 15271, File No. BPCT-3104; for construction permit to change transmitter site and antenna height above average terrain of Station WSUR-TV, Channel 9, Ponce, Puerto Rico.

1. The Commission has before it for consideration: (a) The above-captioned application of American Colonial Broadcasting Corporation (ACBC), licensee of Television Broadcast Station WSUR-TV. Channel 9, Ponce, Puerto Rico; (b) an informal objection filed October 31, 1962, pursuant to § 1.587 of the Commission's rules, by El Mundo, Inc., licensee of Television Broadcast Station WKAQ-TV. Channel 2. San Juan, Puerto Rico: (c) the reply of ACBC to (b), above, filed December 20, 1962; and (d) the reply of El Mundo to (c), above, filed January 3,

By its application, ACBC seeks authority to change the site of the transmitter of Station WSUR-TV from Cerro Maravilla, a mountain site over 4,500 feet above sea level, approximately 11 miles north-northeast of Ponce, to a point within the city limits of Ponce, and to change the height of antenna above average terrain from 2,590 feet to minus 43 feet. No change in the effective radiated power is proposed. The present Grade B contour of Station WSUR-TV encompasses the entire island of Puerto Rico with the exception of a small area in the extreme eastern tip of the island, including the whole of San Juan and 15 miles beyond, while the present Grade A contour lies within 10 miles of San Juan. Operating as proposed, Station WSUR-TV's predicted Grade B contour would describe a circle approximately 35 miles in diameter, representing a substantial shrinkage of the WSUR-TV coverage area. ACBC is also the licensee of Television Broadcast Station WKBM-TV, Channel 11, Caguas, Puerto Rico, which is permitted to identify itself as "Caguas-San Juan". There is a substantial overlap of the Grade A contours of the applicant's two stations.

3. ACBC has previously sought to relocate its transmitter from its present site. In July 1960, ACBC filed an application (BPCT-2801) for a construction permit to increase the power of Station WKBM-TV, Caguas, Puerto Rico, and to make other changes in the facilities of that station. The following month, ACBC filed an application (BPCT-2808) for a construction permit to change the location of the transmitter of Station WSUR-TV, Ponce, Puerto Rico, from its present site to a point just outside Ponce and to reduce its antenna height above average terrain from 2,590 feet to minus 230 feet. The proposals would have increased the facilities of Station WKBM-TV and reduced the facilities of Station

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WSUR-TV, resulting in a substantial increase in the WKBM-TV signal intensity in San Juan and generally improving that station's coverage. The applications were granted in November 1960, without hearing and, pursuant to the provisions of the Communications. Act and the Commission's rules then in effect, El Mundo filed a post-grant protest and petition for reconsideration. Throughout that proceeding, the two applications were treated as one proposal since the improved coverage which would result from the WKBM-TV proposal would fill in the voids resulting from the reduced coverage contemplated by the WSUR-TV proposal. At the same time, ACBC would avoid conflict with § 73.636 of the Commission's rules with respect to overlap. After considering the questions raised by El Mundo, at that time a "party in interest" under applicable provisions of the statute then in effect, the Commission postponed the effective date of the grants and designated the applications for evidentiary hearing (FCC 61-88; 21 RR 154). Three months later, ACBC tendered its construction permits for cancellation and filed a petition to terminate the proceeding as moot. El Mundo opposed the petition, asking that the applications be denied or dismissed with prejudice. By Order released March 3, 1961 (FCC 61M-349) the Chief Hearing Examiner terminated the proceeding and dismissed the applications with prejudice. The Commission, acting upon a Petition for Review filed by ACBC, ordered the proceeding terminated, but set aside the dismissal with prejudice, and cancelled the construction permits (FCC 61-655; 21 RR 602).

4. To justify its current proposed move, ACBC points to the inaccessibility of its present site and the consequent difficulties which it has had in maintaining and operating its equipment. ACBC further states that it actually delivers a usable signal to very little of its computed coverage area and, in fact, cannot deliver a satisfactory signal to all parts of the City of Ponce. It is stated that the present site is inaccessible because wheeled vehicles cannot approach closer than one kilometer in good weather and three kilometers in rainy weather; that it frequently becomes necessary to transport engineers and maintenance personnel by helicopter, but helicopters will not operate in bad weather and the personnel are compelled to walk; that power to the transmitter frequently fails and the inaccessibility of the site involves long delays in restoring power; that this, in turn, necessitates frequent operation of gasoline-powered emergency equipment; that since helicopters refuse to carry gasoline, the fuel must be transported by pack mule or by hand; that operators are often required to remain at the transmitter site for several days until relieved, and that these conditions have resulted in a constant turnover of personnel, with the result that it is necessary to operate with inexperienced operators at excessively high wages. ACBC further states that, because of the mountainous terrain, the bulk of Sta-

does not actually receive a usable signal, and that it has made a survey of viewers and repairmen which confirms this conclusion. Even in Ponce itself, ACBC says, viewers cannot receive a satisfactory WSUR-TV signal because most sets are equipped with indoor "rabbit ears" rather than outdoor antennas, which are corroded by the salt air, while most homes in Ponce using "rabbit ears" receive excellent signals from competitive stations.

5. El Mundo, in its objection, states that a grant of the ACBC application would result in the loss of television service to areas now receiving such service and "white" and "gray" areas would be created. El Mundo further urges the invalidity of the ACBC survey and raises question about alleged undisclosed plans of ACBC to expand the coverage area of Station WKBM-TV in the wake of the shrinkage of the WSUR-TV computed contours to avoid conflict with § 73.636 of the Commission's rules.

6. It is apparent that there will be a substantial reduction in the predicted coverage area of Station WSUR-TV in the event of a grant of the application. In Hall et al. v. Federal Communications Commission (99 U.S. App. D.C. 86; 237 F. 2d 567), the Court held that where a change of transmitter site would result in a substantial curtailment of a station's coverage area and the consequent loss of television service to areas which were receiving such service, a grant of the application would not be in the public interest unless the loss were to be offset by gains or other advantages to the public interest. Consequently, the Commission must weigh the losses which may occur in the event of a grant of the ACBC application, against any gains The Comor other offsetting factors. mission, however, is not able to determine, on the basis of the pleadings, the areas and populations which may be expected to gain or lose television service in the event of a grant, nor do we have sufficient information as to what other television service is available in the areas which might lose service. The alleged inaccessibility of the Station WSUR-TV transmitter site and the station's inability to maintain and operate its equipment properly, the extent to which Station WSUR-TV delivers a usable signal to its present computed coverage area, including Ponce itself, may all very well be offsetting factors and are clearly relevant to a determination as to whether a grant of the ACBC proposal would serve the public interest, convenience and necessity. These are. however, questions of fact which can be established in an evidentiary hearing. Consequently, it is clear that the abovecaptioned application must be designated for hearing.

7. El Mundo urges the Commission to consider the motives of the applicant in filing the application, suggesting that this application is the precursor to the filing of an application by ACBC to expand the coverage area of Station WKBM-TV without running afoul of § 73.636 of the Commission's rules with regard to overlap. We think this point tion WSUR-TV's computed coverage area is well taken. In the light of the past

history of the applicant's activities with respect to changes in the facilities of these two stations and in view of the fact that the applicant has not denied that it is contemplating expansion of Station WKBM-TV's coverage area, a determination as to whether the filing of the instant application was in furtherance of a plan to increase the coverage area of Station WKBM-TV is relevant and appropriate. Accordingly, an appropriate issue will be specified to determine the facts and circumstances surrounding the preparation and filing of the instant application.

8. El Mundo is not a "party in interest" within the intent and manifest within the intent and meaning of section 309(d)(1) of the Communications Act of 1934, as amended, or § 1.580 (i) of the Commission's rules, nor, indeed, does it claim standing as such. It is apparent, however, that El Mundo may be able to furnish information in this proceeding which would be of material assistance to the Commission in determining whether a grant of the application would serve the public interest, convenience and necessity. We will, accordingly, make El Mundo a party to this proceeding upon our own motion.

In view of the foregoing, except as indicated by the issues specified below, the applicant is legally, technically, financially, and otherwise qualified to construct and operate as proposed. However, the Commission is unable to make the statutory finding that a grant of the application would serve the public interest, convenience and necessity, and is of the opinion that the application must be designated for hearing on the issues set forth below.

Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned application of American Colonial Broadcasting Corporation is designated for hearing at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose television service from the proposed operation of Television Broadcast Station WSUR-TV and the availability of other television service to such areas and populations.

2. To determine the nature of the conditions which exist with respect to the accessibility of the present site of the Station WSUR-TV transmitter and the extent, if any, to which such conditions may impair the ability of Station WSUR-TV to maintain and operate its equipment.

3. To determine the facts and circumstances surrounding the preparation and filing of the instant application.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That El Mundo, Inc., licensee of Television Broadcast Station WKAQ-TV, Channel 2, San Juan, Puerto Rico, is made a party to this proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicant and the party respondent herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order; and

It is further ordered, That the applicant herein shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.594(a) of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: January 8, 1964. Released: January 13, 1964.

[SEAL]

Federal Communications Commission, Ben F. Waple, Secretary.

[F.R. Doc. 64-415; Filed, Jan. 15, 1964; 8:49 a.m.]

[Docket Nos. 15269, 15270; FCC 64-11]

#### MEREDITH COLON JOHNSTON (WECP) AND WILLIAM HOWARD COLE (WHOC)

#### Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications Meredith Colon Johnston (WECP), Carthage, Mississippi, Docket No. 15269, File No. BP-15088; requests: 1480 kc, 500 w, Day, Class III; William Howard Cole (WHOC), Philadelphia, Mississippi, Docket No. 15270, File No. BP-15231; has: 1490 kc, 250 w, U, Class IV, requests: 1490 kc, 250 w, 1 kw-LS, U, Class IV, for construction permits.

1. The Commission has before it for consideration (a) the above-captioned and described applications which were granted simultaneously without hearing by action of the Commission on September 11, 1963 (announced September 12. 1963), both granted subject to the condition that each permittee shall accept interference received from the proposal of the other; (b) a statement filed on October 14, 1963, by William Howard Cole rejecting the grant of his application pursuant to § 1.110 of the rules; (c) a petition, also filed on October 14, 1963. by Cole requesting reconsideration of the grant of the application of Meredith Colon Johnston; (d) Johnston's opposition to Cole's petition filed on November 12, 1963; and (e) Cole's reply to the opposition filed on December 11, 1963.1

¹Neither the opposition nor the reply was filed within the times prescribed in § 1.106 of the Commission's rules. However, both applicants were allowed additional time in which to prepare and file these pleadings. Cole's reply to Johnston's opposition covers sixteen double-spaced typewritten pages, exclusive of exhibits, and therefore exceeds the ten-page limit imposed by § 1.106(h) of the rules. However, in view of the matters

2. Prior to the grant of the applications here under consideration, Cole vigorously opposed favorable action on the Johnston application on the ground that Johnston's proposed station would cause objectionable interference to both the existing 250 watt and proposed onekilowatt operations of Class IV standard broadcast Station WHOC, Cole's station in Philadelphia, Mississippi, that Johnston is not financially qualified and that the transmitter site proposed by Johnston is not available. On the basis of data submitted by Cole in the course of his opposition to Johnston's proposal prior to a grant, the Commission found that Johnston's proposal would cause interference to the licensed 250-watt operation of WHOC affecting approximately 375 people (2.15 percent) out of a total of 17,240 people within the normally protected service area of WHOC. Interference caused to the proposed one-kilowatt operation of WHOC would affect approximately 2,082 people (7.62 percent) out of a total population of 27,384 people. The one-kilowatt operation of WHOC would cause interference to Johnston's proposal affecting approximately 1,159 people representing 5.45 percent of the total population of 21,324 within Johnston's proposed primary service area. The Commission determined that the interference involved was not such as to preclude favorable action on both proposals, and, in accordance with its usual practice in such cases, granted both applications subject to appropriate conditions. Cole now rejects his authorization so conditioned and demands a hearing contemplated by the provisions of § 1.110 of the Commission's rules.

- 3. Cole also renews his contention that Johnston is not financially qualified to construct and operate his proposed station and asserts that the question of the availability of Johnston's proposed transmitter site has not been resolved.
- 4. Cole's claim of standing by reason of expected interference is opposed by Johnston on the ground that the petition for reconsideration is not accompanied by an affidavit of a qualified radio engineer as required by § 1.106 of the Commission's rules; that Cole presumably relies on measurements submitted prior to the time the Commission granted

raised in Johnston's opposition, the Commission hereby waives the limitation prescribed by  $\S~1.106(h)$ .

<sup>2</sup>Prior to the grant of the applications, Cole sought to raise a question as to whether Johnston had made a reasonable effort to ascertain the needs, interests and desires of his prospective listeners. Cole now appears to have abandoned his contention on this question.

<sup>3</sup> Cole contends that Johnston's assertion that there has been a discrepancy in the measurements Cole's consultant submitted means that Johnston is accusing Claude Gray of submitting false or carelessly arrived at measurements. Of course, the Commission cannot consider a bare assertion that readings "are less than half the measurements" submitted by a consulting engineer without supporting data. It would appear that this aspect of the controversy should be considered on the basis of the relative merits of technical evidence in the event Johnston chooses to question the showing submitted on Cole's behalf.

the applications; that those measurements were not taken in accordance with the procedures prescribed by § 73.186 of the rules and that, assuming the measurements are accurate, the interference to the existing service area of WHOC would affect only one percent of the population in the WHOC service area which should be deemed de minimis. The onepercent loss is based on assertions under oath by Johnston that he has made a house count in the area involved and has himself made measurements at the points where a consultant made measurements on Cole's behalf with the result that Johnston's measurements were lower than those submitted by Cole.3 Johnston submitted no engineering data to support his assertions.

5. Conceding that Cole's measurements were not made in sufficient number to satisfy the requirements of § 73.186 of the rules, they were sufficient to indicate the probability that the soil conductivity in the area is greater than that indicated on Figure M-3 of the rules. Therefore, in granting the Johnston application, it was appropriate to require Johnston to accept any interference resulting from the grant of Cole's application.5 Now that Cole has rejected the grant of his application as conditioned, the procedure contemplated by § 1.110 of the rules requires a hearing on both applications. It would not be appropriate to affirm the grant of Johnston's application and order a hearing only on Cole's application because such a course would require that any subsequent grant of Cole's application would be on condition that he accept the interference from Johnston's proposal. This is the very condition that Cole rejects. Accordingly, the applications will be designated for hearing in a consolidated proceeding to determine whether a grant of one of the applications, or whether a grant of both would better provide a fair, efficient and equitable distribution of radio service as envisioned by section 307(b) of the Communications Act of 1934. amended.

6. In support of his contention that Johnston is not financially qualified, Cole contends that the Commission "relies" upon an amendment filed by Johnston on March 25, 1963 subsequent to a pre-grant petition to deny filed by Cole. Cole suggests that the Commission's determina-

<sup>&#</sup>x27;On December 12, 1963, Cole filed a statement of Claude M. Gray, his consulting engineer, in support of the validity of the measurement data which indicates that Johnston's proposal will cause interference to the existing and proposed operation of WHOC. Gray's statement also indicates that plans by Cole to apply for a power increase date from 1960. The statement was accompanied by a motion to accept Cole's reply filed December 11, 1963, and to consider the statement of Gray submitted on December 12. As previously indicated, the reply has been accepted. Gray's statement filed on December 12 has also been considered.

In view of the fact that the data submitted by Cole establishes that interference would be caused to the existing operation of WHOC, Cole is a party in interest or person aggrieved within the meaning of Section 405 of the Communications Act of 1934, as amended, and § 1.106(b) of the Commission's rules.

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tion is insupportable and that the Commission has found Johnston financially qualified notwithstanding Johnston's alleged failure to meet the requirements of the Commission's application form. Cole sites Paragraph 4(h), section III, of FCC Form 301, which requires the submission of verified copies of agreements by which financial institutions and equipment manufacturers are obligated to make loans or extend credit. Cole also cites Paragraph 4(c), Page 2, of Section III of the application form and questions the sufficiency of the "unverified" letters from individuals-who have agreed to become co-signers to assist Johnston in securing a bank loan. But the agreements and unverified letters to which Cole objects are originals, not copies. The Commission does not require verification of original agreements or other undertakings. It requires only verification of copies.

7. In addition, Cole objects to the Commission's failure to require Johnston's co-signers to furnish balance sheets or financial statements, to disclose their interests for the past five years in business or financial enterprises and to disclose net income for the past two years. On the basis of the information before it, the Commission concludes that the Carthage Bank has made a determination that the co-signatures of the named individuals are ample security for the bank's purpose. The obligation of each co-signer is nominal in amount, and the primary concern with respect to the ability of each co-signer to meet his obligation is that of the bank. The Commission is convinced that Johnston has a reasonable expectation of the availability of a loan in the amount of \$5,000. This conviction is not vitiated by the condition that the matter is subject to review as it is the Commission's understanding that a review of the type contemplated is common practice among financial institutions.

8. Cole also questions the adequacy of Johnston's estimates of the cost or construction and operation of the station. Apparently, Cole would have the Commission substitute his judgment for Johnston's inasmuch as he submits "suggested adjustments" in operating costs and in "putting the station on the air". Cole suggests the addition of certain items and increases in others. While it is apparent that Johnston's estimates are, to use his term, modest, he has demonstrated to the Commission's satisfaction by detailed equipment costs, a breakdown of operating expenses, and a showing of the availability of funds that he is able to meet the costs of construction and initial operation of the proposed station. That is all the Commission reauires. Moreover, Johnston has submitted evidence that his net worth has increased to \$22,200.

9. Cole's contention regarding the question of the availability of Johnston's proposed transmitter site is based upon obvious confusion with respect to the point which his specified coordinates should describe. Coordinates originally specified were 32°43'10" N., 89°33'12" W. On March 25, 1963, Johnston amended his application to specify the following coordinates: 32°43'19.9" N., 89°33'-41.4" W. Cole's statement in his petition for reconsideration that neither set of coordinates agrees with those specified as Johnston's transmitter site is not ac-The latter coordinates were curate. specified in the amendment of March 25, and the grant of Johnston's application authorized construction at that point. Johnston now states in his opposition that, as a result of his pointing out the wrong spot to his surveyor, the March 25 coordinates are in error, and that he and the surveyor have returned to the site and determined that the coordinates originally specified are correct. This, in the Commission's opinion, does not raise a question as to the availability of the site. It merely indicates that, assuming the original coordinates to be correct, those are not the coordinates presently specified by the application in view of the March 25 amendment. Accordingly, in order to clarify this point, the correctness of Johnston's coordinates will be placed in issue, and Johnston will be directed to submit a corrective amendment if necessary. If, as Cole suggests, the site shown in the photographs on file with Johnston's application do not show the actual transmitter site, Johnston will be given the opportunity to file the necessary additional photographs, and an issue to determine the suitability of the site will be included. The disposition of this aspect of the case does not mean that the Commission condones inaccuracies in proposals submitted for consideration. It simply is a recognition of the fact that inaccuracies in plotting coordinates do occur. In some instances the inaccuracies are not discovered until some time after a station has been in operation. Upon discovery of such inaccuracies, we think it is reasonable simply to require corrective amendments.

10. Cole, in his reply, also alleges that

Johnston is presently employed as general manager of Station WLSM, Louisville, Mississippi. Cole submits an affidavit of Tom B. Estes in which Estes states that on December 6, 1963, he re-corded an announcement being broadcast by WLSM in which listeners were informed that merchants in Ackerman, Mississippi, were distributing "Trade's Day tickets" for drawings at which cash prizes would be awarded. Following the announcement, Estes drove to Ackerman and called at three business establishments where the WLSM announcement indicated the tickets for the drawing were available. Estes states, that in each place of business where he called for the purpose of registering for the prizes, he was advised that he must make a purchase or pay a bill in order to register. Estes' affidavit raises the question as to whether Johnston, as manager of Station WLSM at the time in question, participated in the dissemination of information concerning a lottery in violation of section 1304 of the United States Code and § 73.122 of the Commission's rules.

11. In addition to the foregoing matters, allegations have been made by Johnston which reflect on Cole's motives in prosecuting his own application and in opposing Johnston's, and Cole has made counter-allegations questioning

Johnston's qualifications and motives. The Commission has considered all such allegations and has concluded that they are unsupported by sufficient facts to raise a substantial issue.

12. Upon consideration of the pleadings before it and upon reconsideration of the applications of Meredith Colon Johnston and William Howard Cole, the Commission reaffirms its finding that both applicants are legally, financially and technically qualified to construct and operate as proposed and that William Howard Cole is otherwise qualified. The Commission reserves its determination of other qualifications of Johnston pending the conclusion of the proceeding hereinafter ordered.

Accordingly, it is ordered, This 8th day of January 1964, that the petition of William Howard Cole to reconsider the Commission's action of September 11, 1963, in granting without hearing the application of Meredith Colon Johnston is granted to the extent indicated herein and is denied in all other respects.

It is further ordered, That the action of the Commission in granting the applications of Meredith Colon Johnston and William Howard Cole is hereby set aside and that, pursuant to section 405 of the Communications Act of 1934, as amended, and §§ 1.106 and 1.110 of the Commission's rules, the said applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposed operation of William Howard Cole and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WHOC and the availability of other primary service to

such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the proposals would cause to and receive from each other and the interference that each of the proposals would receive from all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from either of the proposals.

4. To determine whether the coordinates specified in the application of Meredith Colon Johnston as amended on March 25, 1963, accurately depict the location of his proposed antenna

structure.

5. To determine whether the site photographs on file in the application of Meredith Colon Johnston accurately represent the transmitter site Johnston proposes and, if not, whether the transmitter site proposed is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation pattern.

6. To determine whether, on or about December 6, 1963, Meredith Colon Johnston, as general manager of Station WLSM, Louisville, Mississippi, knowingly

permitted the broadcasting over the facilities of WLSM any advertisement of or information concerning any lottery, git enterprise, or similar scheme in violation of section 1304 of the Criminal Code (Title 13, United States Code, section 1304) and § 73.122 of the Commission's rules, and, if so, whether such action reflects adversely on Mr. Johnston's qualifications to be a broadcast licensee.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, or both of the applications should be granted. It is further ordered, That William

It is further ordered, That William Howard Cole is made a party respondent to the proceeding on the application of Meredith Colon Johnston with respect to the existing operation of WHOC.

It is further ordered, That Meredith Colon Johnston is hereby directed to amend his application to specify correct coordinates in the event such coordinates are different from those specified in the amendment to his application filed on March 25, 1963, and to amend his application to include photographs which correctly depict the proposed transmitter site in the event the location of the proposed site is other than that shown in the photographs now on file.

It is further ordered, That, in the event of a grant of the application of Meredith Colon Johnston, the construction permit shall contain the following condition: Pending a final decision in Docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of § 73.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

It is further ordered, That, in the event of a grant of the application of William Howard Cole, the construction permit shall contain the following conditions:

Permittee shall submit with the application for license, antenna resistance measurements made in accordance with § 73.54 of the Commission's rules.

Permittee shall accept such interference as may be imposed by other existing 250 watt Class IV stations in the event they are subsequently authorized to increase power to 1000 watts.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such

permitted the broadcasting over the notice as required by § 1.594(g) of the facilities of WISM any advertisement of rules.

It is further ordered, That the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: January 13, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

BEN F. WAPLE, Secretary.

[F.R. Doc. 64-416; Filed, Jan. 15, 1964; 8:49 a.m.]

[Docket Nos. 15248-15250; FCC 64M-36]

## UNITED ARTISTS BROADCASTING, INC., ET AL.

#### Order Scheduling Hearing

In re Applications of United Artists Broadcasting, Inc., Cleveland, Ohio, Docket No. 15248, File No. BPCT-3168; Cleveland Telecasting Corp., Cleveland, Ohio, Docket No. 15249, File No. BPCT-3191; the Superior Broadcasting Corp., Cleveland, Ohio, Docket No. 15250, File No. BPCT-3243; for construction permits for new television broadcast stations.

It is ordered, This 10th day of January 1964, that Sol Schildhause shall serve as presiding officer in the above-entitled proceeding; that the hearings in the proceeding shall be held in the offices of the Commission, Washington, D.C., commencing March 16, 1964; and that a prehearing conference shall be convened in the offices of the Commission, Washington, D.C., on February 12, 1964.

Released: January 10, 1964.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL]

BEN F. WAPLE, Secretary.

[F.R. Doc. 64-419; Filed, Jan. 15, 1964; 8:50 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3421]

## CONTINENTAL VENDING MACHINE CORP.

#### **Order Summarily Suspending Trading**

JANUARY 10, 1964.

In the matter of trading on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange in the Common Stock, 10 cents par value and trading on the American Stock Exchange in the 6 percent Convertible Subordinated Debentures due September 1, 1976 of Continental Vending Machine Corporation; File No. 1–3421

The common stock, 10 cents par value, of Continental Vending Machine Corp.,

being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976, being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such securities on such Exchanges and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange:

It is ordered, Pursuant to section 19(a) (4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and the Philadelphia - Baltimore - Washington Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period January 12, 1964 through January 21, 1964, both dates inclusive.

By the Commission.

[SEAL]

ORVAL L. DuBois, Secretary.

[F.R. Doc. 64-403; Filed, Jan. 15, 1964; 8:48 a.m.]

[File No. 812-1646]

#### E. I. DU PONT DE NEMOURS AND CO.

#### Notice of Filing of Application for Order Exempting Transactions Between Affiliated Persons

JANUARY 10, 1964.

Notice is hereby given that E. I. du Pont de Nemours and Company ("applicant") Wilmington 98, Delaware, a Delaware corporation, 29 percent of the common stock of which is owned by Christiana Securities Company ("Christiana"), a registered closed-end investment company, has filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from section 17(a) of the Act the purchase by Stauffer Chemical Company ("Stauffer") from applicant of applicant's 50 percent interest in Old Hickory Chemical Co. ("Old Hickory") and the sale to applicant by Stauffer or Old Hickory of a 66-acre and a 47-acre tract of land. All persons are referred to said application on file with the Commission for a full statement of the representations therein which are summarized below.

Applicant and Stauffer each own 50 percent of the outstanding capital stock of Old Hickory. Under sections 2(a) (3)

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and (9) of the Act, Christiana is presumed to control applicant and Old Hickory, Stauffer is an affiliated person. of Old Hickory and Old Hickory is an affiliated person of Christiana. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered investment company or any company controlled by such registered investment company, any security or other property, subject to certain exceptions, unless the Commission upon application pursuant to section 17(b) grants an exemption from the provisions of section 17(a), after finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Old Hickory was originally capitalized with \$500,000 consisting of 5,000 shares of \$100 par value capital stock, and the 50 percent interest therein of each of the owners, applicant and Stauffer, represents a cash investment of \$250,000. Since its formation in 1928 Old Hickory has manufactured only carbon bisulfide, virtually all of which was sold to and used by applicant principally in the manufacture of rayon and cellophane. As a result of applicant's withdrawal from rayon manufacture, its requirements for carbon bisulfide have declined steadily in recent years. For business reasons, applicant and Stauffer have decided to terminate their joint venture in Old Hickory and Stauffer has offered to purchase applicant's 50 percent interest in Old Hickory for \$1,110,000, provided that applicant will enter into a contract with Stauffer under which applicant would agree for a period of five years to purchase from Stauffer at the prevailing market price all of applicant's carbon bisulfide requirements for the locations now served by Old Hickory. The contract would give applicant the benefit of any lower price extended by Stauffer to any other carbon bisulfide customer and would allow applicant to accept any outside offer to supply a like quantity of carbon bisulfide at a lower delivered price unless Stauffer would be willing to reduce the contract price to meet such offer.

While applicant does not know the basis upon which Stauffer arrived at its offering price of \$1,110,000, it believes that it is fair and reasonable to both parties. Applicant estimates that the shareholders' equity in the realizable value of Old Hickory's assets upon liquidation would be approximately \$973,000 at December 31, 1963. Applicant also estimates Old Hickory's total carbon bisulfide sales over the five years from 1964 through 1968 to be 184.4 millions of pounds and total net income to be \$1,-120,000 in that period. Addition of such five-year net income to the estimated net realizable value at December 31, 1963 produces a total of \$2,093,000. Applicant's 50 percent interest therein would

be \$1,046,500 which approximates the \$1,110,000 offered by Stauffer.

In connection with the termination of the Old Hickory joint venture, Stauffer has agreed to extend to applicant, or cause Old Hickory to extend to applicant, options to purchase a 66-acre and a 47acre tract of land, located in the village of Old Hickory, Davidson County, Tennessee, about 10 miles northeast of the city of Nashville and which lie between applicant's manufacturing facilities and approximately 130 acres of undeveloped land which were purchased by applicant from Stauffer in December 1962, at an average price of \$950 per acre, which transaction was exempted by order of the Commission dated December 27, 1962 (Investment Company Act Release No. 3599).

Stauffer has agreed to extend to applicant, or cause Old Hickory to extend to applicant, an option to buy the 66acre tract, including the buildings and equipment of Old Hickory located thereon, for \$115,000. The option would be exercisable 15 years from the date thereof, or at such earlier date as Stauffer or Old Hickory shall permanently discontinue present manufacturing operations at Old Hickory's facilities on the property. A 300 foot paved public road runs past the plant site; a railroad spur and road lead into the tract and the utilities (gas, electricity and water) that now service Old Hickory's manufacturing facilities would continue to be available in the event the plant is shut down. The tract would be suitable for industrial use similar to its present use.

The 47-acre tract is undeveloped and there is at present no access to this tract by public road and any such access would have to be provided through land now owned by applicant or Old Hickory. Stauffer has agreed to extend to applicant, or cause Old Hickory to extend to applicant, or cause Old Hickory to extend to applicant, an option, exercisable within 90 days from the date thereof, to buy it for a sum equal to \$45,000, or an average price of \$957 per acre. The application states that the tract would be suitable for construction of recreational facilities such as a marina, restaurants, motels, and cottages if access by public road could be obtained.

Applicant is interested in these two tracts of land to consolidate its properties and to provide for possible future expansion of its production facilities, and also to prevent the problems that might arise if a recreation area were developed so near to its present properties. The application states that the \$115,000 price for the 66-acre developed tract offered by Stauffer exceeds by about \$52,000 the aggregate price of \$63,000 that would result if the 66 acres were priced at the average price of \$957 at which Stauffer has offered to sell the undeveloped 47acre tract. This excess of \$52,000 reflects the fact that the property is developed and has utility services. Applicant believes there is a recognizable value in having an option for a maximum period of 15 years on the developed tract that may not require a cash outlay for several years and it is of the opinion that Stauffer's offering price of \$115,000 for the 66-acre tract and the manufacturing facilities thereon and the price of

\$45,000 for the 47-acre tract are fair and reasonable to both parties. It is further believed that the transactions for which exemption is sought otherwise meet the standards of section 17(b) of the Act.

Notice is further given that any interested person may, not later than January 28, 1964, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary. Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DuBois, Secretary.

[F.R. Doc. 64-404; Filed, Jan. 15, 1964; 8:48 a.m.]

[File No. 812-1651]

#### NORTHEASTERN FINANCIAL CORP.

Notice of Filing of Application for Order Exempting Purchase of Securities From Registered Investment Company by Affiliated Person

JANUARY 10, 1964.

Notice is hereby given that Morris M. Schnitzer, Trustee for Northeastern Financial Corporation ("Northeastern"), 1180 Raymond Boulevard, Newark 2, New Jersey, a registered closed-end nondiversified investment company has filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act the purchase of securities from Northeastern by Atlantis International Corporation ("Atlantis"), a New Jersey corporation and an affiliated person of Northeastern. All interested persons are referred to the application, which is on file with the Commission, for a full statement of the representations in said application which are summarized below.

On May 8, 1963, Hon. Anthony T. Augelli, United States District Judge for the United States District Court for the District of New Jersey, appointed Morris M. Schnitzer Trustee of Northeastern under section 42(e) of the Act and the

Court's general equity power in order to prevent further violation of the Act and the Securities Act of 1933. On December 9, 1963, the Trustee filed with the Commission a notification of registration of Northeastern as an investment company pursuant to section 8(a) of the Act.

Upon the Trustee's appointment, 675,378 shares of Northeastern stock were outstanding of which 488,370 shares were held by or for Robert K. Berry, President and promoter of Northeastern. Mr. Berry has since made an unconditional delivery of his stock to the

Northeastern's principal asset is its ownership of 150,000 shares of the common stock of Atlantis, which has 1,008,-618 shares outstanding. Since more than five per centum of Atlantis' voting securities are owned by Northeastern, both companies pursuant to section 2 (a) (3) (A) and (B) of the Act are affiliated persons of each other.

Northeastern acquired 110,000 shares of Atlantis stock from Atlantis in April 1962 for \$110,000. The remaining 40,000 shares were acquired from Robert K. Berry for 450,000 shares of Northeastern common stock since surrendered by Berry to the Trustee. Northeastern has also contracted to buy for \$198,200 payable in instalments 135 lots in a tract of 1,200 acres owned by Atlantis in Little Egg Harbor Township, New Jersey. Northeastern has paid \$25,200 on account and is in arrears on the instalment payments. Atlantis, among other activities, is presently engaged in developing this 1,200 acres for residential, commercial and industrial uses. Atlantis has filed a registration statement under the Securities Act of 1933 covering the public offering of 100,000 shares of its stock at \$4.00 per share through an underwriter on a best efforts basis.

Subject to Court and Commission approval, the Trustee has entered into an agreement with Atlantis, dated December 10, 1963. Atlantis will increase the public offering of its stock from 100,000 to 130,000 shares. If as many as 80,000 shares are sold, Atlantis will acquire from the Trustee 30,000 shares of Atlantis stock at \$3.00 per share, and the Trustee's rights under the lot purchase contract for \$20,000, making a total of \$110,000. In return, the Trustee will release whatever rights Northeastern may have under the Act to rescind both the lot purchase contract as well as the purchase of 110,000 Atlantis shares and thereby to recover \$135,200. If, for any reason, the contract is not consummated. the rescission rights are preserved to Northeastern.

It is represented that both the Trustee for Northeastern and the management of Atlantis believe that the best interests of the stockholders of Northeastern and Atlantis will be served by a resolution of problems which exist by reason of claimed invalidity of the transactions described above. It is further represented by the Trustee that more may be recovered for the estate through execution and effectuation of the contract dated December 10, 1963 than by pressing claims for rescission or by other attempts to realize on the assets acquired in the transaction with Atlantis and its affiliated persons.

Section 17(a) (2) of the Act prohibits an affiliated person of a registered investment company from purchasing from such registered company any security or other property (except securities of which the seller is the issuer), unless the Commission upon application pursuant to section 17(b) of the Act grants an exemption from the provisions of section 17(a)(2) after finding that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than January 28, 1964, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAT.]

ORVAL L. DUBOIS, Secretary.

[F.R. Doc. 64-405; Filed, Jan. 15, 1964; 8:48 a.m.]

[File No. 1-4722]

#### TASTEE FREEZ INDUSTRIES, INC.

#### Order Summarily Suspending Trading

JANUARY 10, 1964.

The common stock, 67 cents par value, of Tastee Freez Industries, Inc., being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange:

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in such security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period January 12, 1964 through January 21, 1964, both dates inclusive.

By the Commission.

[SEAL]

ORVAL L. DUBOIS. Secretary.

[F.R. Doc. 64-406; Filed, Jan. 15, 1964; 8:49 a.m.]

## INTERSTATE COMMERCE COMMISSION

#### FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 13, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 38753, vinyl acetate to Darex, Ky. Filed by O. W. South, Jr., agent (No. A4431), for interested rail carriers. Rates on vinyl acetate, in tank-car loads, from specified points in West Virginia in the Charleston District, to Darex, Ky.
Grounds for relief: Market competi-

tion.

Tariff: Supplement 124 to Traffic Executive Association-Eastern Railroads. agent, tariff I.C.C. C-102.

By the Commission.

[SEAL]

HAROLD D. McCOY, Secretary.

[F.R. Doc. 64-394; Filed, Jan. 15, 1964; 8:45 a.m.)

[Notice No. 925]

#### MOTOR CARRIER TRANSFER **PROCEEDINGS**

JANUARY 13, 1964.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179). appear below:

As provided in the Commission's special rules of practice any interested per422 NOTICES

son may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant o section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 66418. By order of January 9, 1964, the Transfer Board approved the transfer to Bassco Drayage, Inc., Berkeley, Calif., applicant in No. MC 120753 (Sub-No. 1), BOR-99 filed in the name of Millen L. Simpson, Florence A. Simpson, Executrix, John W. Ashford, William D. Sorensen and Gordon H. Ball, a partnership, doing business as Bassco Drayage, Berkeley, Calif., for certificate of registration to operate in interstate or foreign commerce authorizing operations under the former second proviso of section 206(a)(1) of the Act, supported by California Certificate No. 61108, authorizing the transportation of (a) construction, mining and logging machinery, equipment, materials and supplies; and (b) commodities which by reason of size. weight or bulk require special equipment or handling, and materials parts or supplies that are appurtenant to or a necessary part of such commodities, between all points on or within 25 miles of the following routes: U.S. 101 and 101 By-Pass between Garberville and Salinas: State 1 between Leggett Valley and Monterey; State 9 and 17 between Oakland and Santa Cruz; U.S. 40 and 40-Alternate between San Francisco and the California-Nevada State line; U.S. 50 between San Francisco and the California-Nevada State line; U.S. 99, 99-E and 99-W between Red Bluff and Fresno; State 36 between Red Bluff and Johnstonville; U.S. 395 between Johnstonville and the California-Nevada State line and between the California-Nevada State line and Independence; State 20 between Calpella and junction with U.S. 40 near Cisco; State 128 between State Highway 1 near Albion and Winters; State 12 between Santa Rosa and San Andreas; State 29 between Upper Lake and Vallejo; State 16 between State 20, near Wilbur Springs and Drytown; State 32 between Orland and State 36 near

Childs Meadow; unnumbered highway between U.S. Highway 40-A, near Honcut, to junction with State 89, near Quincy, via La Porte and Nelson Point; State 89 between State 36 near Chester and U.S. 395 near Coleville; State 49 between Sattley and Mariposa; State 4 between U.S. 40, near Pinole and State 89 near Markleeville; State 88 between Stockton and Woodfords; State 24 between Oakland and Marysville; State 108 between Sonora and U.S. 395 near Fales Hot Spring; State 120 between U.S. 50, near Lathrop and Lee Vining; State 140 between State 33, near Gustine, and Yosemite; State 41 between Fresno and Yosemite; and State 33 between U.S. 50, near Tracy and Mendota. Daniel W. Baker, 625 Market Street, San Francisco 5, Calif., representative for applicant.

No. MC-FC 66475. By order of January 10, 1964, the Transfer Board approved the transfer to Martin J. Hansberry Trucking, Inc., Nashua, N.H., of Certificates Nos. MC 44250 and MC 44250 (Sub-No. 1), both issued January 18, 1951, to Mary Catherine Hansberry doing business as Martin J. Hansberry Trucking, Nashua, N.H., authorizing the transportation, over irregular routes, of woodwork, and materials, supplies, and equipment incidental to the manufacture and assembly of woodwork, between Nashua, N.H., on the one hand, and, on the other, points in Maine, Vermont, Massachusetts, Rhode Island, Connecticut, and that part of New York east and south of U.S. Highway 11, including points on the indicated portion of the highway specified; the same commodities restricted to shipments picked up as a part of an original order leaving Nashua, N.H., from Boston and Somerville, Mass., to points in the same territory; the same commodities, in truckload lots, from Boston and Somerville, Mass., to Bristol, Meriden, and Hartford, Conn., and points in Rhode Island; asbestos products, from Nashua, N.H., to New York, N.Y., and points in Maine and Vermont; ironing boards, medicine cabinets, sashes, windows, and door cases, between Fitchburg, Mass., on the one hand, and, on the other, points in Maine, Vermont, Massachusetts, Rhode Island, Connecticut, and that part of New York east and south of U.S. Highway 11, including points on the indicated portion of the highway spec-

ified; nails, window weights, and trim and finish, between Worcester, Mass., on the one hand, and, on the other, points in the above-described territory; and household goods, between points in Cheshire, Hillsboro, Merrimack, and Rockingham Counties, N.H., and those in Massachusetts within 20 miles of Nashua, N.H., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, Virginia, North Carolina, Georgia, Florida, West Virginia, Ohio, Michigan, and Illinois, traversing Wisconsin, Indiana, and South Carolina, for operating convenience only; and household goods, between points in Cheshire, Hillsboro, Merrimack, and Rockingham Counties, N.H., and those in Massachusetts within 20 miles of Nashua, N.H., on the one hand, and, on the other, points in Wisconsin, Indiana, and South Carolina, traversing Rhode Island, Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, Pennsylvania, Ohio, Illinois, and the District of Columbia for operating convenience only. Stanley M. Burns, Bucabrey Building, Dover, N.H., representing applicants.

No. MC-FC 66487. By order of January 7, 1964, the Transfer Board approved the transfer to Milton Wasserburger, Jerome Casser, Leonard Casser, Joseph Casser, New York, N.Y., of Licenses Nos. MC 12367 and MC 12367 (Sub-No. 1), issued July 3, 1947 and October 16, 1963, respectively, to Concourse Tours, Inc., New York, N.Y., authorizing the brokerage operations in connection with transportation by motor vehicle of passengers and their baggage, (1) between New York, N.Y., on the one hand, and, on the other, points in the United States; and (2) between New York, N.Y., and points in Nassau, Suffolk and Westchester Counties, N.Y., on the one hand, and, on the other, points in the United States, except those in Alaska and Hawaii. Robert E. Goldstein, 24 West 40th Street, New York 18, N.Y., representing applicants.

[SEAL] HAROLD D. McCoy, Secretary.

[F.R., Doc. 64-395; Filed, Jan. 15, 1964; 8:46 a.m.]

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